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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BRANNICK LARSEN,

Plaintiff,

v.

INTERMOUNTAIN POWER SERVICE
CORPORATION,

Defendant.

**ORDER GRANTING IPSC'S MOTION
FOR SUMMARY JUDGMENT**

Civil No. 2:03CV00587BSJ

Judge Bruce S. Jenkins

Intermountain Power Service Corporation's ("IPSC") Motion for Summary Judgment (Docket Entry 18) came on for hearing before the Honorable Bruce S. Jenkins on December 2, 2004. Larsen was represented by David L. Cooley. Defendant was represented by Scott M. Petersen and David N. Kelley of Fabian & Clendenin. Based upon the arguments presented at the hearing, careful consideration of the multiple memoranda and exhibits filed by both parties, the Court determines the following:

STANDARD OF REVIEW

Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Richmond v. Oneok, Inc.*, 120 F.3d 205, 208 (10th Cir. 1997). "A disputed fact is 'material' if it might affect the outcome of the suit under the governing law, and the dispute is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Richmond*, 120 F.3d at 208.

UNDISPUTED FACTS

Based upon the memoranda submitted by the parties, the following facts are undisputed. Plaintiff Brannick Larsen was hired by IPSC as a custodian in September 1985. In March 1987, he was promoted to the job of Maintenance Assistant, and in August 1990, to the position of C Operator. In September 1992, Larsen injured his leg in a work-related accident. Following treatment for his leg injury, Larsen was released to work without restriction. Being released to work without restriction did not mean that Larsen was completely free from complications related to his prior left leg injury. Larsen had lost the use of the peroneal nerve in his lower left leg. The biomechanical movements of Larsen's left leg were permanently altered. From the date of the injury through the present date, Larsen has suffered with chronic pain in his left leg.

Larsen returned to work at IPSC, as a C Operator, the same job title he had at the time of the accident, doing the same work as he had done before the accident. IPSC management, including Lowell Curtis, Keith Mangrum, Jon Finlinson, George Cross, Bob Davis, and S. Gale Chapman, were aware of these facts.

In December 1995, Larsen began complaining of pain in his left leg, foot, ankle, and hip. Complications related to Plaintiff's left leg injury became less and less manageable. In 1996,

IPSC management informed all C Operators, including Larsen, that they would be required to complete on the job training for B Operator. IPSC management said that the C Operator position was going to be eliminated and that any C Operator that did not complete the on the job training would be taken off shift work and assigned cleaning tasks.

On or about February 12, 1996, Larsen was promoted to a B Operator position. The B Operator position required Larsen to work 12-hour rotating shifts to check on operating equipment on a regular schedule. He and all other B Operators alternated day and night shifts (rotating shifts). As a B Operator, Larsen was assigned to take readings from gauges and dials that monitor or indicate the operating level of mechanical, electrical, pneumatic, hydraulic and steam operated equipment. Larsen explained the essential functions of the B Operator job as follows:

The essential or non-marginal functions of a B-Operator include the following: operating equipment; walking through the assigned area checking the equipment; hanging or pulling a clearance; troubleshooting problems with the equipment; and cleaning up spills. The essential or non-marginal functions of a B-Operator include physical activities such as climbing ladders or stairs; shoveling; carrying and using various tools such as valve wrenches which can be large. Some of the valves are difficult to turn.

Shortly after his promotion to B Operator, Larsen began missing more work. Larsen missed seven shifts from January 1, 1996 through June 26, 1996. IPSC management frequently did not schedule operators to cover for those who were on vacation. IPSC management would only very rarely call in an operator on overtime to cover for an operator who had called in sick. IPSC management would normally not schedule an operator to cover for someone out for an extended illness.

On or about June 27, 1996, Larsen underwent gallbladder surgery. Thereafter, he missed approximately six weeks of work (June 27, 1996 through August 9, 1996). Larsen took short-

term disability leave during this period. Larsen returned to work for short period of time (less than three weeks), but then needed to take an additional eighteen days off to care for his wife and family. Larsen's wife had been hospitalized with a herniated cesarean section. Larsen returned to work on September 6, 1996.

Early in October 1996 (October 4th & 5th), Larsen was instructed to help start a "1H Pulverizer" that had just been overhauled and needed to be placed in service. Larsen had questions about the readiness of the pulverizer to be placed back into service. When Larsen received answers to his questions, and after inspecting the pulverizer for readiness, after Larsen was satisfied that the pulverizer was safe to be placed back into service, then Larsen completed the assigned task. Thereafter, Larsen missed two days of work.

Larsen returned to work on October 11th and was assigned to "hang a clearance on the Ash Sluice Water pressure regulating valve." Larsen eventually performed the work. Thereafter, Larsen missed the last two "night shifts of the set." Larsen returned to work on October 15. At that time, IPSC told Larsen his use of sick leave was excessive. IPSC pointed out that after his leg injury and treatment, Larsen had been released to work without restriction. Larsen was indefinite about his needs for time off. IPSC explained that Larsen's excessive absences placed a burden on other workers who had to cover Larsen's responsibilities when Larsen failed to report to work and indicated that continued excessive use of sick leave would result in IPSC taking action. Larsen missed work the next day (October 16).

In addition to the October 15 meeting, IPSC's workers compensation coordinator, Lowell Curtis, discussed Larsen's absenteeism and health condition with him on several occasions. Mr. Curtis went to great effort to determine what job functions Larsen could and could not perform.

Mr. Curtis discussed Larsen's condition in depth with Nathan D. Williams, M.D., IPSC's medical examiner, and with Joan Schofield of Pinnacle Risk Management, IPSC's disability insurance carrier. During many of these discussions with Mr. Curtis, Larsen indicated that when he worked a strenuous shift, he had difficulty returning to work due to pain. (Larsen Dep. at 56-57). Larsen said the pain affected his ability to rest and thereby made it more difficult for him to do his job. Larsen requested that Mr. Curtis give him authorization to receive pain management treatment. Other Operators and other Employees had been provided accommodation without a change in job title or reduction in pay.

On or about October 16, 1996, Mr. Curtis met with Bob Davis, Jon Finlinson and George Cross to discuss ways IPSC could accommodate Larsen in his job. Together, they decided to provide Larsen lighter work responsibilities and day shifts. IPSC classified Larsen as a C Operator. Shortly after the meeting, Mr. Curtis again contacted Dr. Williams to discuss Larsen's condition as well as the type of activities Larsen's condition prohibited him from performing. Mr. Curtis requested that Dr. Williams fax IPSC some recommendations. Later that day, Dr. Williams faxed his recommendations. That report notes:

Mr. Larsen has difficulties in climbing steps, prolonged walking, prolonged standing, and any climbing. He also has significant sleep disturbances associated with changing schedules, i.e. rotating shifts. Mr. Larsen's physical disabilities have plateau'd and I do not anticipate any significant improvement in either his ability to accommodate rotating shifts, his ability to alter his weightbearing capabilities or climbing capabilities. Mr. Larsen and I have discussed the inevitable fact that he will have deterioration with his condition over time, rather than improvement.

Based on Larsen's condition, Dr. Williams' recommended that Larsen "avoid stairs, avoid climbing, avoid prolonged standing, avoid walking, and . . . work straight day shifts."

Based on the accommodation meeting earlier in the day and Dr. Williams' recommendations, IPSC held another meeting with Larsen. At that meeting, IPSC informed Larsen that he would be assigned to the C Operator position with several accommodations designed to fit Dr. Williams' recommendations. Among the accommodations provided were four, ten-hour day shifts. IPSC informed Larsen that the changes were made in hopes of improving Larsen's attendance.

IPSC provided a memorandum to Larsen that explained generally the accommodations Larsen was receiving. At that time, Larsen stated that his difficulty with his job was due to his pain, not the rotating shifts. However, Larsen also states that he suffers from chronic fatigue, depression and anxiety. The next day, Mr. Curtis prepared a memorandum outlining the duties of Larsen's C Operator job. In preparing the memorandum, Mr. Curtis compared information gathered from the several discussions with Larsen, Dr. Williams, and Ms. Schofield with a detailed analysis of the B and C Operator job functions. The new job was designed to accommodate Larsen's limitations.

As proposed, effective October 21, 1996, in an effort to help Larsen decrease his absenteeism and improve his performance, IPSC assigned Larsen to the new work schedule and job responsibilities. Larsen's new supervisors were Larry Purvis and George Cross. When Larsen arrived at work at approximately 7:00 a.m. on October 21, 1996, Mr. Cross explained to Larsen that his assigned tasks that day were mainly cleaning functions. They were not "emergency" jobs, and thus he could take a break as necessary for pain.

Later that day, Mr. Purvis called Mr. Cross and explained that Larsen complained he was having trouble with his job due to pain. Mr. Purvis said Larsen had done very little actual work,

but had been "gathering materials." Mr. Cross met with Larsen and asked Larsen to prepare a written statement explaining his pain and what IPSC could do to help Larsen perform his job. Larsen repeatedly indicated that he could perform his new job, but not without great pain. Larsen prepared the requested statement as follows:

I, N. Brannick Larsen, have experienced difficulty in performing the job assignment that I was given this morning. The difficulty is pain that is caused in my left leg. The pain that I have experience is located in the following listed areas: front middle thigh; all of the back portion of the thigh; middle of the shin front and side; top middle of the foot from middle toe to bottom of ankle. All of the listed areas are part of my left leg.

I can be helped so that less pain would be experienced. As little walking from one location to another as possible would help. As little as possible bending over; either from a standing position or sitting position.

The next three days, October 22nd, 23rd, and 24th, Larsen called in sick. Larsen never returned to work at IPSC.

On October 28, 1996, Larsen's treating physician, Brent Jackson, M.D., filled out a Physical Restrictions form provided to him by Pinnacle Risk Management, IPSC's long-term disability insurer. On the form, Dr. Jackson stated that Larsen was restricted in every activity identified on the form. Dr. Jackson's recommended limitations included: no walking more than 30 minutes per day or more than 5 minutes at a time and no walking at all on uneven ground, no standing for more than 10 minutes at a time, no typing for more than 2 hours 30 minutes per day, no repetitive use of hand tools, no shoveling, no lifting more than 30 pounds, no operating equipment or machinery, no frequent bending, twisting or stooping, from a standing or sitting position, no climbing stairs or ladders, no overhead work, no squatting, no pushing, no sitting more than 30 minutes without changing position, no sweeping more than 30 minutes per day, and only from an erect position, no kneeling, and no pulling.

Furthermore, where the form asks for the estimated length of limitations, Dr. Jackson wrote "lifetime". Exactly eight years later, Dr. Jackson prepared an affidavit, dated October 28, 2004, stating that he used the word "lifetime" to describe his opinion of the duration of Larsen's complications related to Larsen's injury. Dr. Jackson filled out another form dated January 13, 1997. Dr. Jackson answered the question, "What is the estimated date limitations are expected to end?" with "lifetime". In 1997, Dr. Jackson indicated that the condition was progressive and permanent. In his 2004 affidavit, Dr. Jackson stated that his description of Larsen's limitations as "lifetime" was his opinion as to the duration of Larsen's complications related to his injury. Dr. Jackson indicated that Larsen was limited as described above as of October 26, 1998. As of January 13, 1997, Dr. Jackson did not know when the limitations were expected to end. Dr. Jackson never released Larsen to return to work.

On November 5, 1996, Larsen was evaluated by Jeff B. Chung, M.D., an independent medical examiner retained by Pinnacle Risk Management. As part of that evaluation, Dr. Chung reviewed and analyzed the C Operator job description, Larsen's medical records, and a Functional Capacity Assessment performed by Dell C. Felix, P.T. on October 31, 1996. Larsen states that he was in Chung's examination room for less than seven minutes. Larsen also states that Chung did not take x-rays in his own office, but used x-rays taken at other physicians' offices.

Based upon his evaluation, Dr. Chung concluded:

It should be emphasized at this time that the patient has expressed motivation not to work. The patient does not feel that he is able to work regardless of modifications made. Because of the patient's belief, I believe it is extremely improbable that the patient will be able to return to work in a functional environment.

Dr. Chung further concluded:

At this point, given the patient's current attitudes and beliefs that he is completely unable to work, I believe that no matter what accommodations are made by his employer the patient will find some way to sabotage such accommodation attempts.

On November 22, 1996, Larsen received a psychological evaluation by Darrell H. Hart, Ph.D.

Dr. Hart reviewed Larsen's medical records and Dr. Chung's IME report. Dr. Hart also conducted a 2 ½ hour psychological evaluation in which Larsen was interviewed and tested.

Based on his evaluation, Dr. Hart explained:

I do acknowledge, as has Dr. Chung, that the chances of finding an appropriate accommodation in his present employment setting would be extremely difficult. The air has been "poisoned". His paranoid sensitivities coupled with what may be peer group rejection and supervisory frustration will make a remarriage extremely difficult.

* * *

Acceptable accommodations on either side are not likely to be attained.

Larsen agreed with Dr. Hart's report.

On December 12, 1996, Larsen had no foreseeable release to return to work, had not worked since October 21, and IPSC terminated Larsen's employment, effective December 13, 1996. Wayne Spencer, president of Larsen's union and the person Larsen sought out to help him with his claims, testified that it was his belief IPSC terminated Larsen based on "personality conflict." Larsen received long-term disability benefits pursuant to IPSC's Long Term Disability Plan ("LTD Plan"). In order to qualify for disability benefits under the LTD Plan, Larsen had to demonstrate that he was "totally disabled" for more than 22 consecutive weeks.

The LTD Plan defines "totally disabled" for the first 24 months as being "unable to do the essential duties of your regular occupation, because of sickness or accidental injury."

Furthermore, Larsen's then treating physician, Dr. Brent Jackson, noted on the physician's statement portion of Larsen's disability claim that the duration of Larsen's limitations are "lifetime" or "unknown." In addition, Larsen has qualified for and received Social Security disability benefits. Larsen qualified for and received workers compensation benefits based on a finding of "permanent total disability." During Larsen's workers compensation proceedings, Larsen, through legal counsel, entered into a Stipulated Agreement for a Tentative Finding of Permanent Total Disability and Order of Approval ("Workers Comp Agreement").

In that agreement, Larsen agreed to the following stipulation:

Plaintiff represents the he is unable to perform the essential functions of his job at IPSC. Respondent [IPSC] represents that plaintiff has not identified any reasonable accommodation that would enable him to perform the essential functions of his job at IPSC.

Larsen states that "totally disabled" under each definition (SSDI, workers compensation, and long-term disability insurance) means "[u]nable to perform the functions of your job at the time" "without accommodation." Larsen states IPSC should have allowed him to take time off whenever he needed it and IPSC should have created a full-time position for him as the coal yard control board operator, one of the assignments of a B Operator. All B Operators must do 11 different essential assignments, of which the coal yard control board operation is only one, or 9% of the total job.

Larsen filed a Charge of Discrimination with the UALD and EEOC on or about February 27, 1997.

CONCLUSIONS OF LAW

II. PRIMA FACIE CASE UNDER THE ADA.

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits an employer from discriminating against any person otherwise qualified, because of that person's disability. To establish a prima facie case of disability discrimination, a plaintiff must show: (1) that he is a disabled person within the meaning of the statute; (2) that he is qualified (that is, he is able to perform the essential functions of the job, with or without reasonable accommodation, which accommodation Larsen must identify); and (3) that IPSC terminated him under circumstances that give rise to an inference that the termination was based on Larsen's disability. *See Morgan v. Hilti Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997).

A. Disability

A plaintiff must show (1) that he has a physical or mental impairment as defined by the ADA, and that (2) the identified impairment substantially limits a major life activity. *See Pack v. Kmart Corp.*, 166 F.3d 1300, 1304 (10th Cir. 1999), *cert. denied*, 528 U.S. 811 (1999).

Larsen's complaints of pain throughout his body, especially in his left leg, as well as depression, anxiety, and difficulty sleeping satisfy the first prong. However, Larsen further has to show that his impairment significantly restricted his major life activity "as compared to the average person in the general population," taking into consideration certain factors, including "mitigating or corrective measures." *Pack*, 166 F.3d at 1306.

Larsen did not identify any "major life activity" that his problems limit, nor did he demonstrate that any limitation is substantial as compared to the general population.

Accordingly, he has failed to establish the first prong of a prima facie case: that he is a disabled person within the meaning of the ADA.

B. Qualified Individual With A Disability

Section 42 U.S.C. § 12111(8) defines a “qualified individual with a disability” as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires . . .”

(emphasis added). The “inquiry is not intended to second guess the employer or to require him or her to lower company standards.” *Milton v. Scrivner, Inc.*, 53 F.3d 1118, 1124-25 (10th Cir. 1995). “[I]t is the employer’s province to define the job and the functions required to perform it.” *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1177 (10th Cir. 1999). The essential functions of the B Operator position include:

operating equipment; walking through the assigned area checking the equipment; hanging or pulling a clearance; troubleshooting problems with the equipment; and cleaning up spills. The essential or non-marginal functions of a B-Operator include physical activities such as climbing ladders or stairs; shoveling; carrying and using various tools such as valve wrenches which can be large. Some of the valves are difficult to turn.

1. Predicable attendance as an essential job function.

Larsen could not perform the essential job function of predictable attendance. In *Mason v. Avaya Communications, Inc.*, 357 F.3d 1114 (10th Cir. 2004), the court held that the plaintiff was not a qualified individual with a disability because she could not perform the essential functions of her job with or without a reasonable accommodation. The essential function Mason was unable to perform was regular physical attendance. *Id.* The court quoted the Fourth Circuit stating, “a regular and reliable level of attendance is a necessary element of most jobs.” *Id.* at 1120 (citing *Tyndall v. Nat’l Educ. Centers, Inc.*, 31 F.3d 209, 213 (4th Cir. 1994).

Attendance was also at issue in *Buckles v. First Data Resources, Inc.*, 176 F.3d 1098 (8th Cir. 1999), where the plaintiff's sinusitis caused him to struggle with attendance for which he was eventually terminated. The plaintiff obtained a jury verdict under the ADA. The employer appealed and the Eighth Circuit reversed in favor of the employer.

The Eighth Circuit explained: "In the context of the ADA, we have recognized that 'regular and reliable attendance is a necessary element of most jobs.'" *Id.* at 1100-1101 (quoting *Nesser v. Trans World Airlines, Inc.*, 160 F.3d 442, 445 (8th Cir. 1998)). The court further stated: "[The defendant] is no exception and considers attendance to be an 'essential function,' as demonstrated by the detailed attendance policies and procedures." *Id.* at 1101. "Because of [the plaintiff's] frequent absences, he was unable to meet an essential function of his employment." *Id.*; see *Tyndall*, 31 F.3d 209, 213 ("An employee who cannot meet the attendance requirements of the job at issue cannot be considered a 'qualified' individual protected by the ADA.").

Here, the B Operator job was performed with 12-hour, rotating shifts requiring regular predictable attendance. The identified functions cannot be completed if the employee is not present to perform them in some predictable fashion. See *Hudson v. MCI Telecommunications Corp.*, 87 F.3d 1167, 1169 (10th Cir. 1996).

IPSC explained that when Larsen was unpredictably absent, it placed a burden on other workers who had to cover Larsen's responsibilities. Despite his understanding of a B Operator's essential job functions, including predictable attendance, Larsen was unable to perform them, admitting that he had no sense of what time off he would need. On October 21, 1996, Larsen left work and never came back.

2. Essential functions of walking, climbing stairs and ladders, shoveling, and moving heavy equipment and valves.

Additionally, Larsen could not perform many other B Operator essential job functions; namely, walking, climbing stairs and ladders, shoveling, and moving heavy equipment and valves.

First, Larsen's treating physician, Dr. Jackson, gave Larsen a medical release from work on October 22, 1996. In a long term disability insurance form, Dr. Jackson indicated that Larsen was unable to climb stairs and ladders and that he could not walk more than thirty minutes per day or more than five minutes at a time. Dr. Jackson also concluded that Larsen could not shovel or use hand tools, mobile equipment, or machinery. Dr. Jackson concluded that Larsen was restricted in every activity related to the B Operator position. As of January 13, 1997, approximately one month after Larsen's termination, Dr. Jackson was still unable to state when Larsen would be able to return to work.

Second, Dr. Williams recommended that Larsen avoid stairs, climbing, walking, and prolonged standing. Dr. Williams also noted that he did not anticipate any significant improvement in Larsen's condition. Instead, Dr. Williams anticipated deterioration in Larsen's condition over time.

Third, on October 21, 1996, while performing modified responsibilities, Larsen experienced still more pain, and subsequently prepared a written statement explaining his difficulties in performing his job. In that statement, Larsen explained that he was having difficulty due to pain and requested that he not have to walk or bend over, either from a standing or sitting position. After preparing the statement, Larsen left work and never returned.

3. Admission of inability to perform the essential functions of the job.

Finally, Larsen admitted that he was unable to perform the essential functions of his job on three occasions.

First, in a stipulation he signed in a related workers compensation case, Larsen stipulated that he was unable to perform the essential functions of his job at IPSC, and that he had not identified any reasonable accommodation that would enable him to perform the essential functions of his job at IPSC. The stipulation was as follows:

Plaintiff represents the he is unable to perform the essential functions of his job at IPSC. Respondent [IPSC] represents that plaintiff has not identified any reasonable accommodation that would enable him to perform the essential functions of his job at IPSC.

Under Utah's worker's compensation statute, to qualify for benefits on the basis of total disability, Larsen had to show he was "not gainfully employed," he had "an impairment . . . that limit[s] [his] ability to do basic work activities," that he was prevented from "performing the essential functions of the work activities for which the employee has been qualified," and that he "cannot perform other work reasonably available, taking into consideration the employee's age, education, past work experience, medical capacity, and residual functional capacity." Utah Code Ann. § 34A-2-413(1)(c). Larsen's statement that he was totally disabled in order to meet the requirements of Utah's worker's compensation statute contradicts his current ADA claim, that he is qualified to performed the essential functions of a B Operator.

Second, Larsen also represented that he was unable to perform his essential job functions in order to secure SSDI benefits. Similar to worker's compensation, to qualify for Social Security benefits Larsen must show "inability to engage in any substantial gainful activity by reason of any . . . physical or mental impairment" 42 U.S.C. § 423(d)(1)(A). Furthermore,

the act requires that the “impairment” be “of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy” 42 U.S.C. § 423(d)(2)(A).

While the U.S. Supreme Court has determined that a person receiving social security disability benefits is not *per se* barred from bringing an action under the ADA, it nevertheless stated, “[t]o survive defendant’s motion for summary judgment, she must explain why that SSDI contention is consistent with her ADA claim.” *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 798 (1998). “[A]n ADA plaintiff cannot simply ignore the apparent contradiction that arises out of the earlier SSDI total disability claim. Rather, she must proffer a sufficient explanation.” *Id.* at 806. In opposing the motion for summary judgment, Larsen failed to explain the contradiction.

Third, Larsen represented to IPSC’s long-term disability carrier, that he was “totally disabled” in order to qualify for long-term disability benefits. To qualify for LTD benefits, Larsen had to show that he was “unable to do the essential duties of [his] regular occupation, because of sickness or accidental injury.” Larsen made unqualified claims of “total disability” to Social Security and the LTD carrier, claims that contradict his current position and for which he has failed to provide a sufficient explanation. Thus, by his own admissions and assertions, he is not a “qualified disabled individual” under the ADA and fails to establish a *prima facie* case. *See Motley v. New Jersey State Police*, 196 F.3d 160, 166-67 (3rd Cir. 1999) (concluding that the Larsen failed to meet his burden of explaining the apparent inconsistencies between his SSDI position and his ADA claim), *cert. denied*, 529 U.S. 1087 (2000).

C. No Accommodation Would Have Allowed Larsen to Perform the Essential Functions of His Job.

Larsen's claim that he could have performed the essential functions of his job if IPSC had provided him the accommodations he requested, namely that he be assigned to work only as the Coal Yard Control Room Operator fails because: (1) Larsen did not request a reasonable accommodation under the ADA, and (2) Larsen would not have performed his essential job functions regardless of the accommodation.

1. Reasonable request for accommodation.

Larsen failed to make a reasonable request for accommodation. "[A]n employee's request to be relieved from an essential function of [his] position is not, as a matter of law, a reasonable or even plausible accommodation." *Mason*, 357 F.3d at 1122. "In fact, the ADA does not even require an employer to modify an essential function of an existing position in order to accommodate a disabled employee." *Id.* at 1123.

In *Milton v. Scrivner, Inc.*, 53 F.3d 1118, 1124-25 (10th Cir. 1995), the court explained: "[a]n employer is not required by the ADA to reallocate job duties in order to change the essential functions of a job. An accommodation that would result in other employees having to work harder or longer hours is not required."

Larsen, like the *Milton* employee, wanted IPSC to change the essential functions of his job, to make walking, climbing stairs and ladders, shoveling, moving heavy equipment and valves, and predictable attendance merely marginal to his job. Furthermore, when Larsen was absent, other workers had to work harder. As the Tenth Circuit has consistently stated, such accommodations are not required under the ADA. "An accommodation that eliminates the

essential function of the job is not reasonable.” *Smith v. Blue Cross Blue Shield of Kansas, Inc.*, 102 F.3d 1075, 1076 (10th Cir. 1996), *cert. denied*, 522 U.S. 811 (1997).

2. Larsen would sabotage any IPSC accommodation.

IPSC made multiple attempts to accommodate Larsen even without a reasonable request. IPSC’s workers compensation coordinator, Lowell Curtis, discussed Larsen’s absenteeism and health condition on multiple occasions. Mr. Curtis went to great lengths to try to determine what job functions Larsen could and could not perform.

In addition to discussing potential accommodations with Larsen, Mr. Curtis discussed potential accommodations with both Dr. Williams and Joan Schofield, a representative from IPSC’s disability insurer. Mr. Curtis reviewed the requirements of the B and C Operator positions and determined, based on the restrictions recommended by Dr. Williams, that Larsen might be able to improve his attendance and performance if he could perform a modified C Operator position. This job would allow Larsen day shifts (four ten-hour days), instead of rotating twelve-hour shifts. Furthermore, the C Operator job would not require the strenuous walking, climbing, stooping, and moving of heavy equipment the B Operator job required. Finally, performing the modified C Operator job would provide Larsen with the chance to rest when needed in order to deal with the pain Larsen constantly claimed he felt. The B Operator job, on the other hand, did not provide that luxury.

All of these accommodations were offered to Larsen in spite of the fact that the ADA did not require them. Furthermore, the four ten-hour days were changed to five eight-hour days as yet another accommodation to Larsen. Notwithstanding the accommodations, after one day of working at his accommodated position, Larsen complained of more pain from walking and

stooping. Larsen left work that day and never returned. On November 5, 1996, Larsen was given an examination by Jeff P. Chung, M.D. Dr. Chung concluded that Larsen would be unable to work regardless of modifications made.

A couple of weeks later, Larsen was given an extensive psychological examination by Darrell H. Hart, Ph.D. Dr. Hart also examined Larsen's medical records and job description, and agreed with Dr. Chung's assessment, indicating that acceptable accommodations on either side were not likely to be obtained. Larsen agreed with Dr. Hart's assessment. No possible accommodation IPSC could have provided would have succeeded in helping Larsen perform his essential job functions. Accordingly, Larsen is not a "qualified disabled individual" under the ADA.

D. Larsen's Termination.

The third prong of a prima facie case requires Larsen to demonstrate that he was terminated under circumstances that give rise to an inference that the termination was based on Larsen's disability. *Morgan*, 108 F.3d at 1323. IPSC made multiple attempts to accommodate Larsen even though the law did not require the accommodations IPSC was willing to provide. Larsen unpredictably missed work, and when he did show up, he constantly complained of pain that made it difficult or impossible for him to perform his job. The undisputed facts show that it was Larsen's inability to perform his job due to pain, his unpredictable absences, and his eventual abandonment of his job that lead to the termination of his employment.

III. PRETEXT UNDER THE ADA.

"After establishment of a prima facie case, the burden shifts to the employer to offer a legitimate nondiscriminatory reason for its employment decision." *Morgan*, 108 F.3d at 1323.

IPSC claims it terminated Larsen because of his inability to perform his essential job functions, including predictable attendance. These proffered reasons fulfill IPSC's burden in this regard. *See Morgan*, 108 F.3d at 1324 (concluding that claim of unscheduled absenteeism is sufficient to meet employer's burden).

IPSC having met its burden, "the burden then reverts to the plaintiff to show that 'there is a genuine dispute of material fact as to whether the employer's proffered reason for the challenged action is pretextual—i.e., unworthy of belief.'" 736 P.2d at 635; *Morgan*, 108 F.3d at 1323. The undisputed evidence points to the fact that IPSC terminated Larsen because of his inability to perform his job functions and his unpredictable absences. Larsen does not dispute that he was unable to perform his job's essential functions. Larsen does not dispute that predictable attendance was a problem. He acknowledged that he had no sense of his time-off needs and by October 21, 1996, Larsen left work never to return. IPSC spoke with Larsen several times about his problems, explained its expectations to Larsen and provided him with multiple accommodations in an attempt to improve his performance. His performance, however, did not improve.

Moreover, Larsen has admitted on multiple occasions and to several different parties that he is totally disabled and unable to perform his essential job functions. Larsen's own doctor and two independent health care providers indicate that Larsen's situation is such that no accommodation would enable him to perform his essential job functions. There is no evidence upon which a fact finder could conclude that IPSC's legitimate nondiscriminatory reasons for terminating Larsen were pretextual.

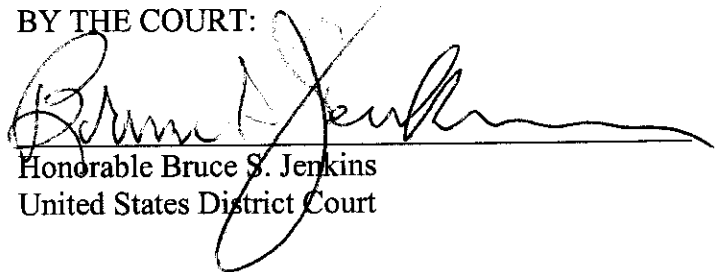
IV. LARSEN'S RETALIATION CLAIM.

During oral argument, counsel for plaintiff indicated that plaintiff was no longer pursuing his claim for retaliation and, therefore the Court does not address this claim.

IT IS HEREBY ORDERED that IPSC's Motion for Summary Judgment is granted and Larsen's claims are dismissed with prejudice and upon the merits, each party to bear its own costs and attorney fees incurred herein.


DATED this 17 day of February 2005.

BY THE COURT:



Honorable Bruce S. Jenkins
United States District Court

Approved as to form:



David L. Cooley
Attorney for Plaintiff

United States District Court
for the
District of Utah
February 18,, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00587

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Scott M. Petersen, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

David L. Cooley, Esq.
31 FEDERAL AVE
LOGAN, UT 84321
JFAX 8,435,7523556

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 A 9:00
RECEIVED CLERK
FEB 14 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

ALMA JEAN FRITZ,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Court No. 2:04 CV 667DS

ORDER


Based upon Defendant's Unopposed Motion To Remand and good cause appearing therefor,

IT IS HEREBY ORDERED that pursuant to sentence four of 42 U.S.C. § 405(g), this case is remanded to the Commissioner for further administrative proceedings. IT IS FURTHER ORDERED that judgment shall be entered in accordance with Fed. R. Civ. P. 58, consistent with the United States Supreme Court's decision in Shalala v. Schaefer, 509 U.S. 292, 296-302 (1993).

Accordingly, this action shall be dismissed.

DATED this 17th day of February, 2005.

BY THE COURT:


Honorable David Sam
United States District Court

15

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00667

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John J. Borsos, Esq.
PO BOX 112347
SALT LAKE CITY, UT 84147-2347
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

FILED
CLERK U.S. DISTRICT COURT
FEB 17 A 9:40
FBI
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

* * * * *

COVERSTAR, INC., A Utah corporation,)

Case No. 2:01cv663 DS

Plaintiff,)

vs.)

ORDER RE: PREPARATION OF
JURY INSTRUCTIONS, VERDICT FORM,
MOTIONS IN LIMINE, AND REQUESTS
FOR VOIR DIRE EXAMINATION

COOLEY, INC., a Rhode Island)

corporation; and COOLEY ENGINEERED)

MEMBRANES, INC., a Rhode Island)

corporation,)

Defendant.)

* * * * *

This order shall supplement DUCivR 47-1 and 51-1, and shall, in all cases, be followed unless otherwise ordered by the court.

JURY INSTRUCTIONS

All proposed jury instructions, except preliminary instructions, are required to be filed and served at least seven days before the trial begins, except for an isolated one or two instructions whose need could not have been foreseen. The court has adopted its own standard preliminary jury instructions and certain stock post trial jury instructions, copies of which counsel may obtain from the court prior to trial. The court, unless it orders otherwise, will give its standard preliminary

62

instructions to the jury at the commencement of the trial. Proposed final jury instructions are to be submitted according to the following procedure:

(a) The parties are required to jointly submit one set of agreed upon final instructions. To this end, the parties are required to serve their proposed instructions upon each other two weeks prior to trial. The parties should then meet, confer and submit one complete set of agreed upon instructions, which should include the court's stock post trial jury instructions where applicable.

(b) If the parties cannot agree upon one complete set of final instructions, they are required to submit one set of those instructions that have been agreed upon, and each party should submit a supplemental set of instructions which are not agreed upon.

(c) It is not enough for the parties to merely agree upon the general instructions, and then each submit their own set of substantive instructions. The parties are expected to meet, confer, and agree upon the substantive instructions for the case.

(d) These joint instructions and supplemental instructions must be filed one week prior to trial. Each party should then file, two days before trial, its objections to the non-agreed upon instructions proposed by the other party. Any and all objections shall be in writing and shall set forth the proposed instruction in its entirety. The objection should then specifically set forth, or highlight, the objectionable material in the proposed instruction. The objection shall contain citation to authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit an alternative instruction covering the subject or principle of law.

(e) The parties are required to submit the proposed joint set of instructions and proposed supplemental instructions in the following format:

(i) There must be two copies of each instruction;

(ii) The first copy should indicate the number of the proposed instruction, and the authority supporting the instruction; and

(iii) The second copy should contain only the proposed instruction--there should be no other marks or writings on the second copy except for a heading reading "Instruction No. ____" with the number left blank.

(f) On the day of trial, the parties may submit a concise written argument supporting the appropriateness of each party's proposed instructions to which the other party objected.

(g) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

(h) Any modifications of instructions from statutory authority, Devitt and Blackmar, or any other form instructions must specifically state the modification made to the original form instruction and the authority supporting the modification.

SPECIAL VERDICT FORM

Any proposed special verdict form is also required to be filed and served at least seven days before trial begins. Where relevant, the procedure outlined in (a)-(h) above will also apply to special verdict forms.

MOTIONS IN LIMINE

All motions in limine are to be filed with the court at least seven days before trial begins, unless otherwise ordered by the court.

REQUESTS FOR VOIR DIRE EXAMINATION

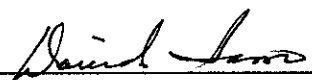
Any special request for voir dire examination of the jury panel regarding the prospective jurors' qualifications to sit, including the specific questions to be put before prospective jurors, shall be submitted in writing to the court and served upon the opposing party or parties at least seven days prior to the time the case is set for trial, unless the court's examination furnishes grounds for additional inquiry. Where relevant, the procedure outlined in (a)-(h) above will also apply to requests for voir dire examination.

Failure to comply with this Order may subject the non-complying party and/or its attorneys to sanctions.

The Clerk of the Court shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

IT IS SO ORDERED.

DATED: February 16, 2005



DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00663

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Evan A Schmutz, Esq.
HILL JOHNSON & SCHMUTZ LC
3319 N UNIVERSITY STE 200
PROVO, UT 84604
JFAX 8,801,3753865

Daniel P. Haley, Esq.
GOODWIN PROCTER & HOAR
EXCHANGE PLACE
BOSTON, MA 02109

John B. Daukas, Esq.
GOODWIN PROCTER & HOAR
EXCHANGE PLACE
BOSTON, MA 02109

Mr. Gary L Johnson, Esq.
RICHARDS BRANDT MILLER & NELSON
50 S MAIN ST STE 700
PO BOX 2465
SALT LAKE CITY, UT 84110
EMAIL

SCOTT D. CHENEY (6198)
Office of the Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0150

RECEIVED
CLERK, U.S. DISTRICT COURT
FEB 17 2005
OFFICE OF U.S. DISTRICT JUDGE
BY: BRUCE S. JENKINS
DEPUTY CLERK

RECEIVED CLERK
FEB 16 2005
U.S. DISTRICT COURT

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

LEMANDA LILLIAN MECHAM,

Plaintiff,

vs.

SEAN D. FRAZIER, DAVID L.
JOHNSON,

Defendants.

AMENDED SCHEDULING ORDER

Case No. 1:04CV00033

Judge Bruce S. Jenkins

Upon review of the parties' *Stipulated Motion to Amend Attorney's Planning Meeting Report* and for good cause appearing, it is hereby ordered that the *Attorney's Planning Meeting Report* dated August 26, 2004 (docket no. 22) is amended to extend certain deadlines as stipulated in the parties' motion. All other dates noted in the *Attorney's Planning Meeting Report* of August 26, 2004 shall remain unchanged. Accordingly, the following deadlines apply:

1. Reports from retained experts:

Plaintiff - March 15, 2005.

Defendants - May 1, 2005.

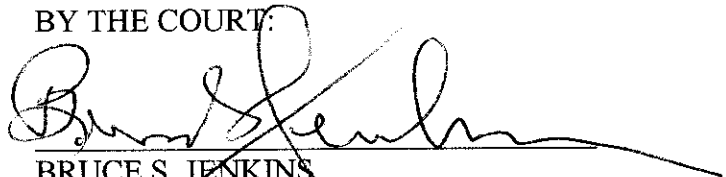
2. Cut-off for fact discovery - May 1, 2005.

35

3. Cut-off for all discovery - June 15, 2005.
4. Cut-off for dispositive motions - July 15, 2005

DATED this 17 day of February, 2005.

BY THE COURT:



BRUCE S. JENKINS
United States District Court Judge

Approved as to form and content:



CORY B. MATTSON
Attorney for Plaintiff

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing **AMENDED SCHEDULING**

ORDER was sent by United States mail, postage prepaid, this _____ day of February, 2005, to:

Scott D. Cheney
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Cory B. Mattson
480 East 400 South, Suite 200
Salt Lake City, Utah 84111

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00033

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Cory B. Mattson, Esq.
480 E 400 S STE 200
SALT LAKE CITY, UT 84111

Scott D. Cheney, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

Mr. Brent A. Burnett, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

United States District Court District of Utah

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:47
BY: [Signature]
JAH

UNITED STATES OF AMERICA

vs.

Kevin J. James

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04CR00115 BSJ**

Plaintiff Attorney: **Vernon Stejskal, SAUSA**

Defendant Attorney: **Benjamin A. Hamilton**

Atty: CJA X Ret FPD

Defendant's Soc. Sec. No.:

Defendant's Date of Birth:

Defendant's USM No.: 11459-081

Defendant's Residence Address:

Country USA

February 8, 2005

Date of Imposition of Sentence

Defendant's Mailing Address:

same

Country

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 3

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☒ was found guilty on count(s) 1 and 3

COP X Verdict

Title & Section

Nature of Offense

**Count
Number(s)**

21 USC 841(a)(1)

Attempted Manufacture of Methamphetamine

1

21 USC 841(c)

Possession of a List I Chemical (Phosphorus)

3

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 2 and 4 (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

84 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

48 months

☐ The defendant is placed on Probation for a period of

112

Defendant: Kevin J. James
Case Number: 2:04CR00115 BSJ

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The Defendant will not use or possess any controlled substances or alcohol while on supervision.
2. The Defendant shall maintain full-time verifiable employment and or educational/vocational training leading to full-time employment as approved by the U.S. Probation Office while on supervision.
3. The Defendant shall submit to random alcohol and drug testing as directed by the U.S. Probation Office, day or night.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No fine imposed based on inability to pay.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- _____

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

None.

Defendant: Kevin J. James
Case Number: 2:04CR00115 BSJ

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other:

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ \$200, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court denies the Defendant's Motion for Departure pursuant to 18 U.S.C. 3553, and the Defendant's argument that he was a minimal or minor participant. The Court enters its reasons for denying departure:

The Court considered the filings and arguments of counsel. The Court finds that the defendant was a knowing participant in methamphetamine manufacturing.

Defendant: Kevin J. James
Case Number: 2:04CR00115 BSJ

RECOMMENDATION

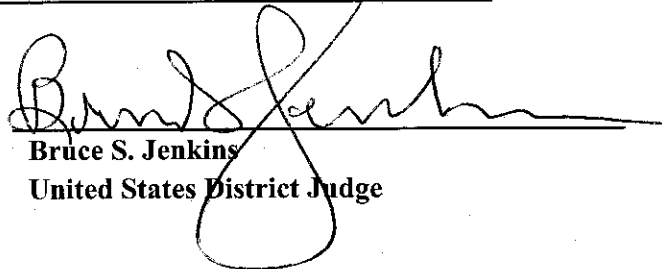
- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
-

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

2/16/05


Bruce S. Jenkins
United States District Judge

Defendant: Kevin J. James
Case Number: 2:04CR00115 BSJ

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00115

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Kristen B. Angelos, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Benjamin A. Hamilton, Esq.
356 E 900 S
SALT LAKE CITY, UT 84111
EMAIL

Ms. Mary C. Corporon, Esq.
CORPORON & WILLIAMS PC
808 E SOUTH TEMPLE
SALT LAKE CITY, UT 84102
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

BERMAN & SAVAGE, P.C.
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144
Telephone: (801) 328-2200

RECEIVED

FEB 16 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:47
DISTRICT OF UTAH
2005 FEB 15 P 4:19
U.S. DISTRICT COURT
DISTRICT OF UTAH
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
judgment assignor, and JAYSON
ORVIS, judgment assignee,

Plaintiff,

vs.

JAMIS M. JOHNSON,

Defendant.

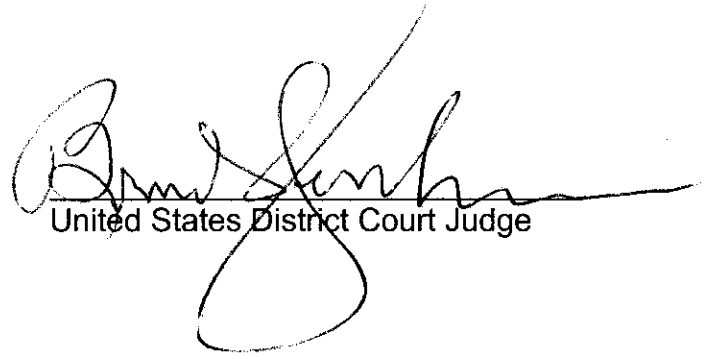
Civil No. 2:95-CV-838J

**ORDER OF SUBSTITUTION
OF COUNSEL**

Based upon the Ex Parte Application for Substitution of Counsel and good cause shown herefore, it is hereby ORDERED that Tomsic Law Firm, with Peggy Tomsic continuing as the lead attorney, is substituted as counsel for plaintiff and judgment assignee, Jayson Orvis in this matter in the place of Berman & Savage, P.C., formerly known as Berman, Tomsic & Savage.

2:45 CV-838 J

DATED: 2/16/05


United States District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the within and foregoing **ORDER OF SUBSTITUTION OF COUNSEL** be mailed, postage prepaid, this _____ day of February, 2005, to the following:

Jamis M. Johnson
Johnson & Associates
352 South Denver Street, Suite 304
Salt Lake City, Utah 84111
Attorney Pro Se

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:95-cv-00838

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dana M Facemyer, Esq.
SALLENBACK & FACEMYER
3610 N UNIVERSITY AVE STE 375
PROVO, UT 84604

Heather Keele, Esq.
TOMSIC LAW FIRM LLC
136 E SO TEMPLE #800
SALT LAKE CITY, UT 84111
Attention: Peggy A Tomsic, Esq.

Jamis M. Johnson
352 S DENVER ST
#304
SALT LAKE CITY, UT 84111

Mr. Victor Lawrence, Esq.
LEXINGTON LAW FIRM
PO BOX 1173
SALT LAKE CITY, UT 84110

Joe Cartwright, Esq.
CARTWRIGHT LAW FIRM
299 S MAIN ST STE 1700
SALT LAKE CITY, UT 84111
EMAIL

Nick Newbold, Esq.
SMALL BUSINESS ADMINISTRATION
125 S STATE RM 2231
SALT LAKE CITY, UT 84138
EMAIL

Mr. Blake S. Atkin, Esq.
ATKIN & SHIELDS PC
136 S MAIN SIXTH FL
SALT LAKE CITY, UT 84101
EMAIL

RECEIVED

FEB 15 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
CLERK U.S. DISTRICT COURT
2005 FEB 17 P 2:47
DISTRICT OF UTAH
BY: [Signature]

RONALD F. PRICE - 5535
PETERS SCOFIELD PRICE
A Professional Corporation
340 Broadway Centre
111 East Broadway
Salt Lake City, Utah 84111
Telephone: (801) 322-2002
Facsimile: (801) 322-2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BAD ASS COFFEE COMPANY OF HAWAII,
INC., a Utah corporation,

Petitioner,

-vs-

ATTITUDE COFFEE CORP., a Canadian
corporation, **BAD ASS ENTERPRISES, INC.**,
a Canadian corporation, and **RON**
PLUCER,

Respondents.

**ORDER GRANTING MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL FOR
RESPONDENTS**

Civil No. 2:04CVOO743

Judge Bruce S. Jenkins

The Ex Parte Verified Motion For Leave To Withdraw As Counsel For Respondents (the "Application to Withdraw") of Ronald F. Price came before the Court for hearing on Monday, 7 February 2005, at 1:45 p.m. Steven T. Densley of the law firm of STRONG & HANNI appeared as substitute counsel on behalf of Respondents. Richard D. Burbidge and Andrew J. Dymek of the law firm of BURBIDGE & MITCHELL appeared on behalf of Petitioner. Ronald F. Price appeared on his own behalf.

At the hearing, counsel for Petitioner represented that Petitioner did not object to the Application to Withdraw as counsel. Accordingly, based upon the consent of


58

Petitioner, the appearance of substitute counsel on behalf of Respondents, being duly advised in the premises and upon good cause showing, hereby finds that the Application to Withdraw should be granted.

Accordingly, it is **ORDERED** that the Application to Withdraw is hereby **GRANTED**. It is further ordered that, effectively 7 February 2005, Ronald F. Price and the law firm of PETERS SCOFIELD PRICE *A Professional Corporation* are hereby granted leave to withdraw as counsel for Respondents in this matter, and are no longer counsel of record for Respondents.

DONE this 16 day of February, 2005.

BY THE COURT



HON. BRUCE S. JENKINS
United States District Court

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2005, a true and correct copy of the foregoing **ORDER GRANTING EX PARTE VERIFIED MOTION FOR LEAVE TO WITHDRAW AS COUNSEL FOR RESPONDENTS** was served in the manner indicated to the following:

Richard D. Burbidge
Jefferson W. Gross
Andrew J. Dymek
BURBIDGE & MITCHELL
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Facsimile: (801) 355-2341

☒ U.S. Mail
☐ Federal Express
☐ Hand Delivery
☐ Facsimile

Steven T. Densley
Strong & Hanni
3 Triad Center, #500
Salt Lake City, Utah 84180
Facsimile: (801) 596-1508

☒ U.S. Mail
☐ Federal Express
☐ Hand Delivery
☐ Facsimile



F:\Data\RFP\Bad Ass Enterprises\Bad Ass Coffee Company of Hawaii\Pleadings\Order Granting Motion for Leave to Withdraw as Counsel(a).wpd

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00743

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S STATE STE 920
SALT LAKE CITY, UT 84111
EMAIL

Ronald F. Price, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
JFAX 9,3222003

Steven T. Densley, Esq.
STRONG & HANNI
3 TRIAD CTR STE 500
SALT LAKE CITY, UT 84180
EMAIL

John Edward Hansen, #4590
SCALLEY & READING, P.C.
261 East 300 South, Second Floor
Salt Lake City, Utah 84111
Telephone: (801) 531-7870
Facsimile: (801) 531-7968

William J. Hansen, #1353
CHRISTENSEN & JENSEN, P.C.
50 South Main Street, Suite 1500
Salt Lake City, Utah 84144
Telephone: (801) 355-3431
Facsimile: (801)-355-3472

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

MARK H WILKINSON, an individual; and
SHEILA RAE WILKINSON, an individual,

Plaintiffs,

v.

CNH AMERICA, LLC, a foreign limited
liability company, and JOHN DOES 1 - 3,

Defendants.

AMENDED SCHEDULING ORDER

Case No. 1:04CV00032 BSJ
Judge: Bruce S. Jenkins

This matter came before the above-entitled Court upon a Motion to Amend the Scheduling Order on the 7th day of December, 2004, at the hour of 9:30 a.m. John Edward Hansen was present and representing Plaintiffs. S. Baird Morgan and Daniel J. LaFave were present and representing Defendant CNH America, LLC. The following dates were set and matters discussed. The following dates should

43

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OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
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FEB 14 2005
U.S. DISTRICT COURT

be considered firm setting and will not be modified without court order, and then only upon a showing of good cause or manifest injustice.

I. PLEADINGS/MOTIONS:

A. The cutoff for filing motions to amend pleadings, including motions to add parties has expired.

B. The cutoff for filing post-discovery, dispositive motions, or potentially dispositive motions, is **Tuesday, May 10, 2005.**

II. DISCLOSURES:

A. Rule 26(f)(1) Conference was held on April 21, 2004.

B. Rule 26(a)(1) Initial Disclosures have been exchanged by the parties.

C. The Attorney Planning Meeting Report was submitted to the Court on May 10, 2004.

D. Amendments or supplementations to disclosures are due by the parties on or before **Friday, February 25, 2005.**

E. Rule 26(a)(2) disclosures and reports from retained experts are due by the Plaintiff on or before **Thursday, March 17, 2005**, and by the Defendant on or before **Friday, April 1, 2005.**

III. DISCOVERY CUTOFFS:

A. Fact discovery will be completed no later than **Friday, February 25, 2005.**

B. All discovery, including expert discovery, will be completed no later than **Friday, April 15, 2005.**

IV. LIMITATIONS ON DISCOVERY:

A. The maximum number of interrogatories by any party to any party are twenty-five (25).

B. The maximum number of requests for admissions by any party to any party are twenty-five (25).

C. The maximum number of fact witness depositions by Plaintiffs will be ten (10).

D. The maximum number of fact witness depositions by Defendant will be ten (10).

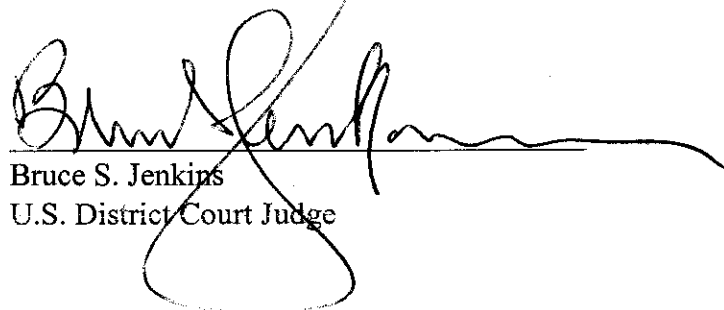
E. The number and length of depositions of designated experts will be determined by agreement of all counsel prior to the depositions.

V. PRETRIAL CONFERENCES:

A. A final pretrial conference is scheduled to take place on **Wednesday, June 22, 2005 at 9:30 a.m.** at which time a trial date will be set. Counsel are to submit an agreed-upon, joint pretrial order to the Court no later than **Monday, June 20, 2005.**

SO ORDERED this 16 day of February, 2005.

BY THE COURT:

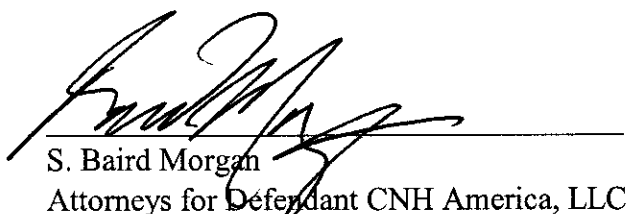


Bruce S. Jenkins
U.S. District Court Judge

APPROVED AS TO FORM AND CONTENT:

DATED: FEB. 11, 2005

RICHARDS, BRANDT MILLER & NELSON



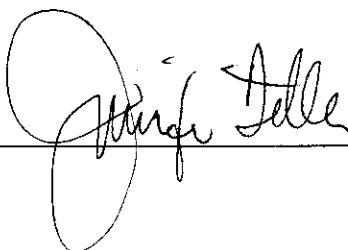
S. Baird Morgan
Attorneys for Defendant CNH America, LLC

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of February, 2005, I served or caused to be served via U.S. mail, first class, postage prepaid, a true and correct copy of the foregoing Amended Scheduling Order to the following:

S. Baird Morgan, Esq.
Richards, Brandt, Miller & Nelson
50 South Main Street, Seventh Floor
Salt Lake City, Utah 84144

Mark A. Kircher, Esq.
Daniel J. La Fave, Esq.
Quarles & Brady, LLC
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497



United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00032

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John E Hansen, Esq.
SCALLEY & READING PC
50 S MAIN ST STE 950
PO BOX 11429
SALT LAKE CITY, UT 84147-0429
EMAIL

William J. Hansen, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
JFAX 9,3239037

S. Baird Morgan, Esq.
RICHARDS BRANDT MILLER & NELSON
50 S MAIN ST STE 700
PO BOX 2465
SALT LAKE CITY, UT 84110
EMAIL

Daniel J. La Fave, Esq.
QUARLES & BRADY
411 E WISCONSIN AVE
MILWAUKEE, WI 53202

Mark A. Kircher, Esq.
QUARLES & BRADY
411 E WISCONSIN AVE
MILWAUKEE, WI 53202

THE MARTINEZ GROUP PLLC
Attorneys for Defendant, The Outback Chair Co., Inc.
55 Poplar Street, Suite 1-D
Brooklyn Heights, NY 11201
(718) 797-2341 Telephone
(718) 222-0481 Facsimile
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DISTRICT

RECEIVED
FILED
2005 FEB 15
DISTRICT COURT
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
DEPUTY JUDGES COPY

-----X
BAILCORP, a Utah Corporation,

Plaintiff,

v.

THE OUTBACK CHAIR CO., INC, an Ohio
Corporation,

Defendant.
-----X


Case No.: 1:05CV00001 (BSJ)
**STIPULATION REGARDING
EXTENSION OF TIME TO
ANSWER COMPLAINT**

The Outback Chair Co., Inc. ("Defendant"), by and through undersigned counsel of record,
and Bailcorp ("Plaintiff"), by and through undersigned counsel of record, hereby stipulate and agree as follows:

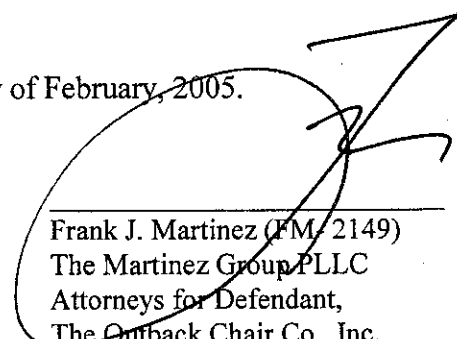
1. That the above-identified Defendant shall be granted an extension of forty-five (45) days, up to and including March 7, 2004, in which to move or otherwise answer the Complaint.
2. It is respectfully requested that this Court execute and enter the attached "Order Extending Time to Answer Complaint."

RESPECTFULLY SUBMITTED this 14th day of February, 2005.

By:


Robert R. Mallinckrodt (2063)
MALLINCKRODT & MALLINCKRODT
Attorneys for Plaintiff, Bailcorp
10 Exchange Place, Suite 510
Salt Lake City, Utah 84111
(803) 328-1624 Telephone
(803) 328-1627 Facsimile

By:


Frank J. Martinez (FM 2149)
The Martinez Group PLLC
Attorneys for Defendant,
The Outback Chair Co., Inc.
55 Poplar Street, Suite 1-D
Brooklyn Heights, NY 11201
(718) 797-2341 Telephone
(718) 222-0481 Facsimile

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing stipulation to extend the Defendant's time to move or otherwise answer was served by facsimile and regular mail upon the below attorney of record of the plaintiff in the above captioned action in accordance with Rule 5 of the Federal Rules of Civil Procedure, on this 10th day of February, 2005.

THE MARTINEZ GROUP PLLC

By: _____

Frank J. Martinez (FM-2149)
Attorneys for Defendant,
The Outback Chair Co., Inc.
55 Poplar Street, Suite 1-D
Brooklyn Heights, NY 11201-6930
(718) 797-2341 Telephone
(718) 222-0481 Facsimile

TO:

Robert R. Mallinckrodt (2063)
MALLINCKRODT & MALLINCKRODT
Attorneys for Plaintiff, Bailcorp
10 Exchange Place, Suite 510
Salt Lake City, Utah 84111
(803) 328-1624 Telephone
(803) 328-1627 Facsimile

THE MARTINEZ GROUP PLLC

Attorneys for Defendant, The Outback Chair Co., Inc.

55 Poplar Street, Suite 1-D

Brooklyn Heights, NY 11201

(718) 797-2341 Telephone

(718) 222-0481 Facsimile

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DISTRICT

-----X
BAILCORP, a Utah Corporation,

Plaintiff,

v.

OUTBACK CHAIR CO., INC., an Ohio
Corporation,

Defendant.
-----X

Case No.: 1:05CV00001 (BSJ)

**ORDER EXTENDING TIME TO
ANSWER COMPLAINT**

Upon stipulation of the parties:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant in the above-captioned action shall be granted a forty-five (45) day extension of time up to and including March 7, 2005 in which to move or otherwise Answer the Complaint.

DATED this 16 day of February, 2005.


UNITED STATES DISTRICT JUDGE

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cv-00001

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert R. Mallinckrodt, Esq.
MALLINCKRODT & MALLINCKRODT
10 EXCHANGE PLACE 510
SALT LAKE CITY, UT 84111
JFAX 9,3281627

Frank J. Martinez
55 POPLAR ST, STE 1-D
BROOKLYN HEIGHTS, NY 11201

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CLERK U.S. DISTRICT COURT

FILED
CLERK U.S. DISTRICT COURT

2005 FEB 17 P 2:47

OFFICE OF U.S. DISTRICT JUDGE
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, : 2:99CR317 BSJ
Plaintiff, :
vs. : ORDER
DAVID MICHAEL YOUNGER, :
Defendant. :

The matter came before the court on the Petition and Order for Warrant for Offender Under Supervision on February 7, 2005 at 3:00 p.m.; Plaintiff was represented by Leshia Lee-Dixon, Assistant United States Attorney; Defendant David Michael Younger was present and in custody represented by Vanessa Ramos.

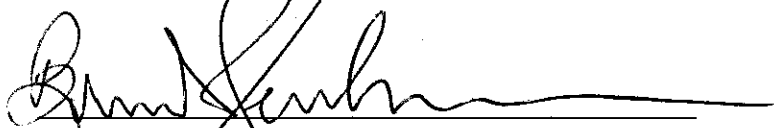
After having heard from both counsel, the Defendant acknowledged violations 1-6 regarding the amended petition. Court found based on admissions the defendant's supervised release should be revoked.

IT IS HEREBY ORDERED:

That defendant's supervised release is revoked. Sentencing is set for February 16, 2005 @ 1:50 p.m..

DATED this 16 day of February, 2005.

BY THE COURT:


BRUCE S. JENKINS
United States District Court Judge

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cr-00317

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Audrey K. James, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

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FEB 10 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:47

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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FEB - 9 2005

U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	:	2:03 CR 999 BSJ
Plaintiff,	:	ORDER RE:
vs.	:	MOTIONS FILED BY THE
LEON BEAR,	:	DEFENDANT AND THE UNITED
Defendant.	:	STATES
		Judge: Bruce S. Jenkins

On January 27, 2005, the parties appeared before the Court for hearing on various motions filed by the parties. The motions were heard by the Court and each of the parties appeared through counsel. Joseph H. Thibodeau and John F. Sullivan appearing for the defendant and Gregory C Diamond and Stanley H. Olsen appearing for the United States.

The following motions were filed with the Court:

1. Motion for Evidentiary Hearing. That motion was granted.
2. Motion for Discovery. That motion was not brought before the court and is denied.
3. Motion for Jencks material. That motion was not brought before the Court and is denied.
4. Motion for Giglio material. That motion was not brought before the Court and is denied.

53

5. Motion seeking leave to file additional motions. The government had no objection to this motion and is therefore granted.

6. Motion for Disclosure of Grand Jury Information, filed by the defendant. The defendant initially filed a general, non-specific, motion seeking "all grand jury information." The government responded that all such information had been provided and invited the identification of any other information. Subsequently the defendant moved for a disclosure of names, certifications and orders in connection with the Grand Jury. That motion is denied. The defendant also requested information regarding duration of service of the Grand Jury. That request was fulfilled by information provided by the government during the hearing.

The defendant also moved for a dismissal of Count 4 of the Indictment, asserting that Count 4 fails to allege a material element of the charged offense. This motion is denied. The defendant has been adequately informed of the elements of the charged offense.

The defendant further moved to suppress statements obtained from Scott York, and from the defendant. Those motions are denied.

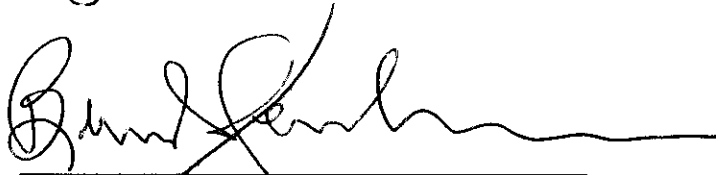
The defendant further moved to suppress the search of premises located at 2480 south Main Street. That motion is denied.

The United States moved for the discovery of 2 items, namely the complete copy of a letter dated August 18, 2003 and a complete copy of a purported tribal resolution. That motion is granted and the material has now been received by the government.

Finally, the Court directed the release of a statement in the possession of the government taken by the State of Utah of Rex and Mary Allen. That statement has been provided to counsel

for the defendant.

DATED this 16 day of February, 2005.

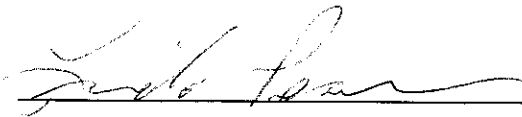
A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", written over a horizontal line.

BRUCE S. JENKINS
United States District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Order Re: Motions Filed by the Defendant and the United States was mailed, postage prepaid to all parties named below, this 9 day of February, 2005.

Joseph H. Thibodeau
155 South Madison Street, Suite 209
Denver, Colorado 80209

A handwritten signature in cursive script, appearing to read "Joe Thibodeau", is written over a horizontal line.

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00999

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Gregory C Diamond, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Neil A. Kaplan, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

Joseph H. Thibodeau, Esq.
JOSEPH H TIBODEAU PC
155 S MADISON STE 209
DENVER, CO 80209
EMAIL

John F. Sullivan III, Esq.
JOHN F. SULLIVAN
155 S MADISON ST, STE 209
DENVER, CO 80209

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Mr. Fred G Nelson, Esq.
UTAH ATTORNEY GENERAL'S OFFICE

160 E 300 S 5TH FLOOR
PO BOX 140873
SALT LAKE CITY, UT 84114-0873
EMAIL

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FEB 15 2005

FEB 15 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

U.S. DISTRICT COURT

PAUL M. WARNER, United States Attorney (#3639)
JAN N. ALLRED, Assistant United States Attorney (#4741)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:47
DISTRICT OF UTAH
BY: [Signature]
CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	ORDER FOR ISSUANCE OF
	)	WRIT OF GARNISHMENT
vs.)	
)	
ROBERT B. HOPE,)	
)	
Defendant,	)	Case No. 2:01CV0679J
)	
WASHINGTON MUTUAL BANK,	)	Honorable Bruce S. Jenkins
)	
Garnishee.)	

Plaintiff United States of America (hereafter the "United States"), has made application for a Writ of Continuing Garnishment in the above-captioned matter pursuant to 28 U.S.C. § 3205 and has included the following information:

1. The judgment debtor's name, social security number (if known) and last known address;
2. The nature and amount of the debt owed and the facts that not less than 30 days have elapsed since demand on the debtor for payment of the debt was

60

made and the judgment debtor has not paid the amount due; and

3. That the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

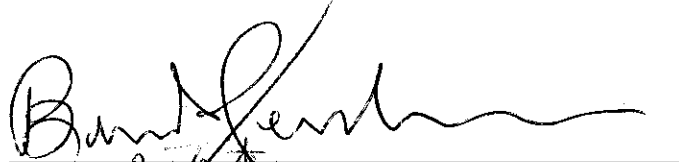
The Court finds that the United States has met the requirements of 28 U.S.C. § 3205(b)(1) and,

IT IS HEREBY ORDERED that the Clerk of the Court shall issue a Writ of Continuing Garnishment in the above-captioned matter.

IT IS FURTHER ORDERED that a surcharge in the amount of \$1,550.76 is added to the judgment pursuant to 28 U.S.C. § 3011.

DATED this 16th day of February, 2005.

BY THE COURT:



U.S. Magistrate Judge
United States District Court

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00679

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James C. Haskins, Esq.
HASKINS & ASSOCIATES
357 S 200 E STE 300
SALT LAKE CITY, UT 84111-2827
EMAIL

Mr. Thomas N Thompson, Esq.
HASKINS & ASSOCIATES
357 S 200 E STE 300
SALT LAKE CITY, UT 84111-2827

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
/ EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 4:59
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

JANET JONES,

Plaintiff,

vs.

SALT LAKE COMMUNITY COLLEGE,
DAVID BURKE and KEVIN SPRAGUE,
individuals, and JOHN DOES 1-10,

Defendants.

Case No. 2:04-CV-1183 TS

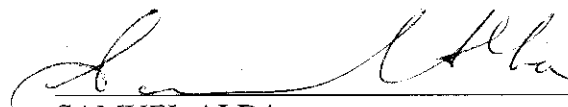
**ORDER GRANTING MOTION TO
QUASH SERVICE OF SUMMONS AND
STRIKING HEARING**

This matter having been set for hearing on Defendant Salt Lake Community College's Motion to Quash Service of Summons, and the Court having been contacted by counsel for Plaintiff informing the Court that they had no opposition to said motion in that they have effected new service,

IT IS HEREBY ORDERED that Defendant Salt Lake Community College's Motion to Quash Service of Summons is GRANTED and the hearing scheduled for February 23, 2005, at 3:00 p.m. is stricken.

DATED this

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

8

jmr

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01183

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mel S. Martin, Esq.
5282 S COMMERCE DR STE D292
MURRAY, UT 84107
JFAX 9,2847313

Geoffrey T. Landward, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
2005 FEB 17 P 4:06

AHMAD R. SHAYESTEH,

Plaintiff,

v.

CENTRAL BANK et al.,

Defendants.

Case No. 2:04-CV-488-TS

O R D E R

Plaintiff, Ahmad R. Shayesteh, filed a prisoner *pro se* civil rights complaint, see 42 U.S.C.S. § 1983 (2005), and moved for service of process. He then served the complaint himself.

IT IS THEREFORE ORDERED that Plaintiff's motion is denied as moot. (See File Entry # 3.)

DATED this 17 day of February, 2005.

BY THE COURT:


~~BROOKE C. WELLS~~ DAVID NUFFER
United States Magistrate Judge

17

jmr

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00488


True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ahmad R. Shayesteh
FCI SANDSTONE
#21396-008-F
KETTLE RIVER ROAD
PO BOX 1000
SANDSTONE, MN 55072

Mr. Thomas W Seiler, Esq.
ROBINSON SEILER & GLAZIER LC
80 N 100 E
PO BOX 1266
PROVO, UT 84603-1266
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:35

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

DISTRICT CLERK
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff

v.

CARLOS ALBERTO PISANI,

Defendant(s).

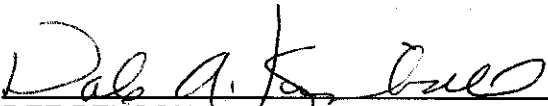
2:05-CR-69-DB

ORDER STAYING RELEASE OF
DEFENDANT PENDING REVIEW BY
THE DISTRICT COURT.

Based on the Motion filed by the United States, and good cause appearing, the Court hereby stays the Magistrate Judge's Order Setting Conditions of Release regarding defendant CARLOS ALBERTO PISANI until Friday, February 25, 2005, at 1:30 p.m., at which time a proceeding will take place before this Court pursuant to 18 U.S.C. § 3145 for a review of said Release Order.

Dated this 17th day of FEBRUARY, 2005.

BY THE COURT,


DEE BENSON
United States District Court Judge



4

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00069

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark K Vincent, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

STEPHEN R. MCCAUGHEY -2149
Attorney at Law
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 2:46
DISTRICT OF UTAH
BY: RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLOYEE HUDSON,

Defendant.

:

:

ORDER

:

:

Case No. 2:04-CR-724 DB

:

Based on the motion of the defendant and good cause appearing,

It is hereby ORDERED that the date for filing the defendant memorandum in support of motion to suppress is extended from its current due date of February 23, 2005 to March 16, 2005.

DATED this 17th day of February, 2005.

BY THE COURT:



DEE BENSON

United States District Court Judge

29

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00724

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mr. David B Oliver, Esq.
180 S 300 W, #210
Salt Lake City, UT 84101-1218
EMAIL

Mr. Bradley P Rich, Esq.
YENGICH RICH & XAIZ
175 E 400 S STE 400
SALT LAKE CITY, UT 84111
EMAIL

Mr. Stephen R McCaughey, Esq.
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 17 P 3:19

COURT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NATURE'S SUNSHINE PRODUCTS, INC.,
et al.,

Plaintiffs,

vs.

OSCAR DE LA MORA, et al.,

Defendants.

ORDER

Case No. 2:05CV43 TC

For the reasons set forth at the close of the February 17, 2005 hearing, Plaintiffs' motion to remand (Dkt. 9) for lack of subject matter jurisdiction is DENIED.

SO ORDERED this 17 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL

United States District Judge

22

alt

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00043

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David B. Watkiss, Esq.
BALLARD SPAHR ANDREWS & INGERSOLL
201 S MAIN STE 600
SALT LAKE CITY, UT 84111-2215
EMAIL

Ms. Janet Hugie Smith, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

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CLERK, U.S. DISTRICT COURT

FEB 14 2005

2005 FEB 17 P 3:18

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BY:

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

IKENNA IKOKWU,

Defendant.

**ORDER PERMITTING WITHDRAWAL
OF COUNSEL**

Case No. 2:05-CR-035 TC

~~Also A-05-06-M~~

This matter came before the Court on a Motion to Withdraw filed by Jamie Zenger, Attorney for Defendant. Ronald J. Yengich, having been retained for defendant on January 6, 2005, and good cause appearing,

IT IS HEREBY ORDERED:

Jamie Zenger, Attorney for Defendant, is hereby granted leave to withdraw as counsel of record.

DATED this 16 day of February, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

23

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00035

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael P. Kennedy, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr. Ronald J. Yengich, Esq.
YENGICH RICH & XAIZ
175 E 400 S STE 400
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 17 P 3:15

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BY: _____
DEPUTY CLERK

ICON HEALTH & FITNESS, INC.,

Plaintiff,

vs.

THE NAUTILUS GROUP, INC., fka
DIRECT FOCUS, INC., and
NAUTILUS/SCHWINN FITNESS GROUP,
INC.,

Defendants.

ORDER

Case No. 1:02 CV 109 TC

Before the court is Nautilus' Motion for an order Requiring Icon To Publish Retraction of Press Release and for Attorneys Fees. The court DENIES the motion for the reason that this is something the court cannot properly address at this time.

DATED this 17 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

290

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:02-cv-00109

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Larry R Laycock, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mr. Thomas R Karrenberg, Esq.
ANDERSON & KARRENBURG
50 W BROADWAY STE 700
SALT LAKE CITY, UT 84101
EMAIL

Mr. William B. Prince, Esq.
DORSEY & WHITNEY
170 S MAIN #900
SALT LAKE CITY, UT 84101
EMAIL

Paul T. Meiklejohn, Esq.
DORSEY & WHITNEY LLP
US BANK CENTRE
1420 5TH AVE STE 3400
SEATTLE, WA 98101-4010
EMAIL

John W. Sobba, Esq.
NAUTILUS GROUP
1400 NE 136TH AVE
VANCOUVER, WA 98684-0818

STEPHANIE AMES (#6466)
Attorney for Defendant
32 Exchange Place, Suite 101
Salt Lake City, Utah 84111
Telephone: 801/322-1732
Facsimile: 801/363-4850

RECEIVED
CLERK, U.S. DISTRICT COURT
FEB 16 2005
2005 FEB 11 P 3:15
OFFICE OF
JUDGE TENA CAMPBELL
BY: _____
DEPUTY CLERK
RECEIVED CLERK
FEB 15 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	ORDER TO ALLOW DEFENSE
	)	COUNSEL TO WITHDRAW
)	
VICTOR MENDOZA,	)	Case No. 2:03CR0171TC
)	
Defendant.)	
)	

Based upon the motion of defense counsel made in open court on February 10, 2005, stipulation by the government through Special Assistant United States Attorney Clark Harms, and good cause appearing; it is hereby ordered that CJA appointed defense counsel Stephanie Ames is allowed to withdraw as counsel for defendant Victor Mendoza in the above-referenced matter.

DATED this 17 day of Feb, 2005.

BY THE COURT:

Tena Campbell
TENA CAMPBELL
United States District Judge

AS

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00171

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Stephanie Ames, Esq.
3635 BIRCH AVE
OGDEN, UT 84403
EMAIL

Jon D. Williams, Esq.
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

Clark A Harms, Esq.
SALT LAKE COUNTY DISTRICT ATTORNEY'S OFFICE
111 E BROADWAY STE 400
SALT LAKE CITY, UT 84111
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court
District of Utah

2005 FEB 11 P 3:15
DISTRICT CLERK

UNITED STATES OF AMERICA

VS.

Michael Goudie

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-CR-00207-003-TC**

Plaintiff Attorney: **Vernon Stejskal, SAUSA**

Defendant Attorney: **Julie George, Esq.**

Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11428-081**

Defendant's Residence Address: _____

Country: _____

02/16/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

same

Country: _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **12/8/04** Verdict _____

5 and 6 of indictment

Title & Section

21 USC § 841(c)(2)

Nature of Offense

Possession of a List II Chemical, Iodine, Knowing
it Would be Used to Manufacture a Controlled
Substance

Count

Number(s)

5 & 6

Entered on docket

2-18-05 by:

[Signature]
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) **1** of indictment (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the
defendant be committed to the custody of the United States Bureau of Prisons for a term of

33 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

36 months

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

65

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO.
2. The defendant shall submit his person, residence, office, or vehicle to search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
3. The defendant shall not possess or consume alcohol.
4. The defendant shall submit to the collection of a DNA sample at the direction of the US Bureau of Prisons or the USPO.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No fine imposed.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Drug Enforcement Administration Denver Division Office 115 Inverness Drive East Englewood, Colorado 80112	\$3,684.54	\$3,684.54

Totals: \$ 3,684.54 \$ 3,684.54

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☒ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
jointly and severally, payable at a minimum rate of \$105 per month upon release from incarceration.
- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 200.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility close to the state of Utah and that he be given credit for time served. The court recommends defendant participate in the Intensive Drug and Alcohol Treatment Program known as RDAP.

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 2-17-2005

Tena Campbell
Tena Campbell
United States District Judge

Defendant: Michael Goudie
Case Number: 2:04-CR-00207-003-TC

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

alt

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00207

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Stephanie Ames, Esq.
3635 BIRCH AVE
OGDEN, UT 84403
EMAIL

Julie George, Esq.
PO BOX 112338
29 S STATE STE 7
SALT LAKE CITY, UT 84147
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 3:15
DISTRICT OF UTAH
CLERK

United States District Court District of Utah

UNITED STATES OF AMERICA

vs.

Joe Rakes

aka Gary Hart

aka Jeff Jones

aka Toby Parcels

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 11423-081

Defendant's Residence Address: _____

Country _____

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:04-CR-00271-001-TC

Plaintiff Attorney: Jack Haycock, AUSA

Defendant Attorney: Jeremy Delicino

Atty: CJA ☒ Ret ☐ FPD ☐

02/16/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

same

Country _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 12/08/2004 Verdict _____

Lof indictment

Title & Section

18 USC § 472

Nature of Offense

Attempt to Pass Counterfeit Obligation of the United States

Count

Number(s)

I

Entered on docket

2-18-05 by:

DL
Deputy Clerk

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

15 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

36 months

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

ake

Defendant: Joe Rakes
Case Number: 2:04-CR-00271-001-TC

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing.
2. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment.
3. The defendant shall not use or possess alcohol.
4. The defendant shall refrain from association with any known gang members.
5. The defendant shall submit to the collection of a DNA sample directed by the US Bureau of Prisons or the USPO.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No fine imposed.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

Defendant: Joe Rakes
Case Number: 2:04-CR-00271-001-TC

- ☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
 - ☐ other: _____

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

Defendant: Joe Rakes
Case Number: 2:04-CR-00271-001-TC

RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
-

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 2-17-2005

Tena Campbell
Tena Campbell
United States District Judge

Defendant: Joe Rakes
Case Number: 2:04-CR-00271-001-TC

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

alt

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00271

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jack B. Haycock, Esq.
US ATTORNEY'S OFFICE
801 E SHERMAN STE 192
POCATELLO, ID 83201
EMAIL

Jeremy M. Delicino, Esq.
MCCAUGHEY & METOS
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 17 A 11:31

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

CRYSTAL CLAYTON,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,

Defendant.

Civil No. 1:04-CV-147 TC

SCHEDULING ORDER

JUDGE TENA CAMPBELL

MAGISTRATE JUDGE BROOKE C.
WELLS

The court establishes the following scheduling order in the
above captioned case:

1. Plaintiff's motion for review of the Commissioner's
decision and accompanying memorandum should be filed by April 8,
2005.

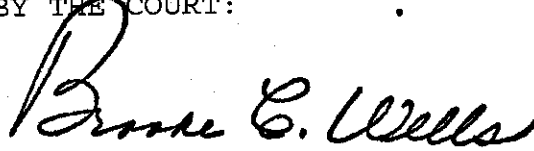
7

2. Defendant's memorandum in opposition should be filed by May 13, 2005.

3. Plaintiff may file a reply memorandum by May 27, 2005.

DATED this 17 day of February, 2005.

BY THE COURT:

A handwritten signature in cursive script, reading "Brooke C. Wells". The signature is written in dark ink and is positioned above a horizontal line.

Brooke C. Wells
United States Magistrate Judge

alt

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00147

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.
MYLER LAW OFFICES
1278 S 800 E
PO BOX 970039
OREM, UT 84097
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Dennis R. James, No. 1642
Michelle H. Christensen, No. 10136
MORGAN, MINNOCK, RICE & JAMES, L.C.
Kearns Building, Eighth Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 531-7888
Fax number: (801) 531-9732
Attorneys for Plaintiffs

FILED
CLERK, U.S. DISTRICT COURT

RECEIVED

2005 FEB 13 A 11:57

FEB 16 2005

OFFICE OF
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

RECEIVED CLERK
DEPUTY

FEB 16 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FARM BUREAU LIFE INSURANCE
COMPANY and FARM BUREAU MUTUAL
INSURANCE COMPANY,

Plaintiffs,

v.

AMERICAN NATIONAL INSURANCE
COMPANY, AMERICAN NATIONAL
GENERAL INSURANCE COMPANY,
AMERICAN NATIONAL PROPERTY &
CASUALTY COMPANY and DARRIN IVIE,

Defendants.

DARRIN IVIE,

Counterclaim Plaintiff,

v.

FARM BUREAU LIFE INSURANCE
COMPANY and FARM BUREAU MUTUAL
INSURANCE COMPANY,

Counterclaim Defendants.

**ORDER GRANTING EXTENSION
OF TIME FOR PLAINTIFF TO
RESPOND TO DEFENDANT
DARRIN IVIE'S FIRST SET OF
REQUESTS FOR ADMISSION,
INTERROGATORIES, AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFFS.**

Civil No. 2:03 CV 00646 TC

Honorable Tena Campbell

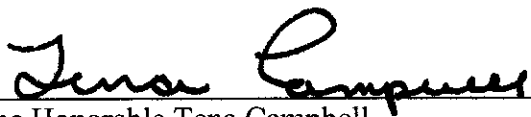
(61)

Based upon the Stipulation for Extension of Time for Plaintiff Farm Bureau to Respond to Darrin Ivie's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents to Plaintiffs, entered into between Plaintiffs Farm Bureau Life Insurance Company and Farm Bureau Mutual Insurance Company (hereinafter collectively referred to as "Farm Bureau") and Defendant Darrin Ivie, by and through their respective counsel of record, and for good cause appearing therefore,

It is hereby ORDERED that Farm Bureau may have an extension of time through and including Wednesday, February 23, 2005, in which to respond to Darrin Ivie's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents to Plaintiffs.

DATED this 16 day of February, 2005.

THE UNITED STATES DISTRICT COURT


The Honorable Tena Campbell
United States District Court Judge

Approved as to Form:

PARR WADDOUPS BROWN GEE & LOVELESS



Jonathan O. Hafen
Matthew J. Ball
Attorneys for Defendant Ivie

CERTIFICATE OF MAILING

I hereby certify that on this 16 day of February, 2005, I caused a true and correct copy of the foregoing **ORDER GRANTING EXTENSION OF TIME FOR PLAINTIFF TO RESPOND TO DEFENDANT DARRIN IVIE'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS** to be mailed via first-class mail, postage prepaid, to the following:

Jonathan O. Hafen
Matthew J. Ball
PARR WADDOUPS BROWN GEE & LOVELESS
185 S. State St., Ste. 1300
Salt Lake City, UT 84111
Attorneys for Defendant Darrin Ivie

Lawrence E. Stevens
Derek Langton
John E. Delaney
PARSONS BEHLE & LATIMER
One Utah Center
201 S. Main St., Ste. 1800
P.O. Box 45898
Salt Lake City, UT 84145-0898
Attorneys for Defendant American National Insurance Company

Jeannine Bennett
Jeannine Bennett, P.C.
136 S. Main St., Ste. 421
Salt Lake City, UT 84101
Attorney for Defendants American National General Insurance Company and
American National Property & Casualty Company

A handwritten signature in black ink, appearing to read "Darrin Ivie", is written over a horizontal line.

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00646

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stephen G Morgan, Esq.
MORGAN MINNOCK RICE & JAMES
136 S MAIN STE 800
SALT LAKE CITY, UT 84101
JFAX 9,5319732

Mr. Jonathan O. Hafen, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

Mr. Lawrence E Stevens, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

M. David LeBlanc, Esq.
GREER HERZ & ADAMS LLP
1 MOODY PLAZA 18TH FLOOR
GALVESTON, TX 77550

Jeannine Bennett, Esq.
136 S MAIN #421
SALT LAKE CITY, UT 84101
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

SECUNDINO OVIEDO
GONZALEZ

Defendant(s).

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 15 2005

Case No. 2:05-CR-79 DAK

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

ORDER APPOINTING COUNSEL

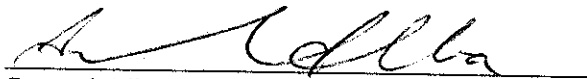
The defendant, SECUNDINO OVIEDO GONZALEZ requested the appointment of counsel on 2/15/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

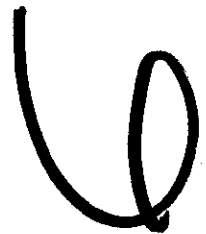
IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 15th day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge



United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00079

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

SECUNDINO OVIEDO GONZALEZ Case Number: 2:05-CR-79 DAK

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
FEB 15 2005
BY MARCUS B. ZIMMER, CLERK
DEPUTY CLERK

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following factors require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____ *
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention


I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

BICE HAS PLACED A HOLD ON DEFENDANT

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 15, 2005


Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALB

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00079

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

STEVEN MANDARINO

Case Number:

2:05-CR-19 TS

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. The following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense, state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
FEB 15 2005
MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

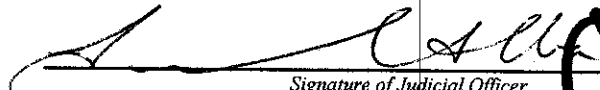
I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

PRIOR CRIMINAL HISTORY

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 15, 2005


Signature of Judicial Officer
CHIEF MAGISTRATE JUDGE SAMUEL ALVA
Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00019

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Barbara Bearnson, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Benjamin A. Hamilton, Esq.
356 E 900 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 18 A 9:27

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF UTAH

FOR THE DISTRICT OF UTAH BY: DEPUTY CLERK

BANYAN PROPERTIES	NOTICE REGARDING COURTESY COPIES
Plaintiff(s),	
vs.	Case No: 2:05-CV-125 TS
SIGNATURE DESTINATIONS	District Judge Ted Stewart
Defendant(s).	Magistrate Judge David Nuffer

This case has been referred to the magistrate judge under 28 U.S.C. § 636(b). Courtesy copies provided for the magistrate judge through the clerk's office in the manner provided in DUCivR 5-1(a)(3)¹ may not be available to the magistrate judge for several days after filing due to docketing and circulation procedures.

To provide the magistrate judge with more prompt access to courtesy copies of materials filed, the materials should be provided in the conventional manner, as the Rule directs **and** by

(a) email to utmj_nuffer@utd.uscourts.gov² **or**

(b) fax to 801 526 1159 **or**

(c) delivery to chambers at Room 483, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah.

¹ "At the time of filing, the clerk will require: . . . (3) the original and *two (2)* copies of all pleadings, motions, and other papers pertaining to a matter that has been referred to a magistrate judge."

² WordPerfect or text-based PDF format is preferred. Microsoft Word format and PDF documents created by scanning are also acceptable when such formats are necessary.

3

In the event copies are not provided in one of these three accelerated methods, materials may be delayed. Additional information is at <http://www.utd.uscourts.gov/judges/nuffer.html>.

February 18, 2005.

BY THE COURT:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

David Nuffer
U.S. Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00125

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James D Gilson, Esq.
CALLISTER NEBEKER & MCCULLOUGH
10 E SOUTH TEMPLE STE 900
SALT LAKE CITY, UT 84133
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH NORTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JOSE VICENTE-HERNANDEZ

Defendant(s).

Case No. 1:05-CR-10 DAK

ORDER APPOINTING COUNSEL

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 15 2005

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

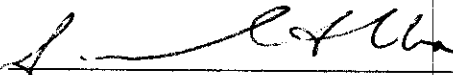
The defendant, JOSE VICENTE-HERNANDEZ requested the appointment of counsel on 2/15/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,


IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 15 day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge



United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00010

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

JOSE VICENTE-HERNANDEZ

Case Number:

1:05-CR-10 DAK

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH

FEB 15 2005

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal, state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

BICE HAS PLACED A HOLD ON DEFENDANT

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 15, 2005

[Signature]
Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBA

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §851 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00010

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
2005 FEB 17 P 4:07

JONATHAN M. HENRY,
Plaintiff,

v.

SALT LAKE COUNTY et al.,
Defendants.

)
)
) DISTRICT OF UTAH
) Case No. 2:04-CV-113-DAK
) DEPUTY CLERK
)
)
)


) O R D E R
)
)

Plaintiff, Jonathan M. Henry, filed a prisoner *pro se* civil rights complaint, see 42 U.S.C.S. § 1983 (2005), which is pending screening. See 28 *id.* § 1915A. In April 2004, Plaintiff moved for an extension of time in which to submit some grievance documents. Since then, the documents appear to have been submitted.

IT IS THEREFORE ORDERED that Plaintiff's motion is denied as moot.

DATED this 17 day of February, 2005.

BY THE COURT:


~~BROOKE C. WELLS~~ DAVID NUFFEN
United States Magistrate Judge

14

blk

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00113

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan M. Henry
235 S RIO GRANDE ST
SALT LAKE CITY, UT 84101

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

blk

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00334

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard L. Holbert
CENTRAL UTAH CORRECTIONAL FACILITY
31416
PO BOX 550
GUNNISON, UT 84634

Criminal Appeals, Esq.
CRIMINAL APPEALS
160 E 300 S SIXTH FLOOR
PO BOX 140854
SALT LAKE CITY, UT 84114-0854
JFAX 9,3660167

Brett J. DelPorto, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DISTRICT OF UTAH

GASPAR VALDEZ III,	)	BY: _____
	)	DEPUTY CLERK
Plaintiff,	)	Case No. 2:04-CV-143 DAK
)	
v.)	
)	
STATE OF UTAH et al.,	)	O R D E R
)	
Defendants.)	

Plaintiff, Gaspar Valdez III, filed a *pro se* prisoner civil rights complaint. See 42 U.S.C.S. § 1983 (2005). Plaintiff now moves to appear for oral argument.

IT IS HEREBY ORDERED that Plaintiff's motion is denied as premature. (See File Entry # 8.) The Court has yet to screen Plaintiff's complaint for merit to determine whether to serve it on Defendants or dismiss it. See 28 U.S.C.S. § 1915A (2005).

DATED this 19 day of February, 2005.

BY THE COURT:



DAVID O. NUFFER
United States Magistrate Judge

10

blk

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00143

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Gaspar Valdez III
UTAH STATE PRISON
30972
PO BOX 250
DRAPER, UT 84020

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
RECEIVED CLERK
FEB 18 2005
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

2005 FEB 17 P 8:01

U.S. DISTRICT COURT
DISTRICT OF UTAH

W. ANDREW MCCULLOUGH (2170)
J. ROBERT LATHAM (6915)
MCCULLOUGH & ASSOCIATES, L.L.C.
Attorney for Defendant
6885 South State St., Suite 200
Midvale, UT 84047
Telephone: (801) 565-0894

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

---oooOooo---
UNITED STATES OF AMERICA, : ORDER TO PRODUCE
Plaintiff, : PRE-SENTENCE REPORT
vs. :
KIMBERLY MIKESELL, : Case No. 2:03-CR-00178DAK
Defendant. : Magistrate Judge Alba
---oooOooo---

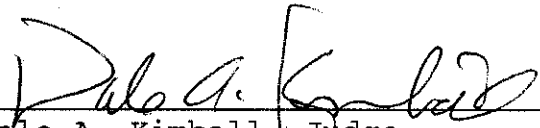
THE COURT, having read the Motion of Defendant to produce a copy of the final pre-sentence report in this matter, dated June 7, 2004, and finding that the production of the report for the benefit of Defendant's counsel on appeal is necessary to properly prosecute that appeal, now make and enters the following ORDER:

1. The clerk of the Court is ordered to provide Defendant's appellate counsel, W. Andrew McCullough, with a copy of the final pre-sentence report in this matter, dated June 7, 2004, to be used in the appellate process, and to be kept confidential.

1001

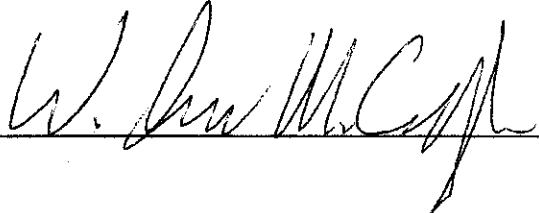
DATED this 18th day of February, 2005.

BY THE COURT


Dale A. Kimball, Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of February, 2005, I did mail a true and correct copy of the foregoing Order, postage prepaid to the Wayne Dance, Assistant U.S. Attorney, 185 South State, Suite 400, Salt Lake City, Utah 84111.



Criminal/Mikesell.K.NotAppeal

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00178

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. W. Andrew McCullough, Esq.
MCCULLOUGH & ASSOCIATES
6885 S STATE STE 200
MIDVALE, UT 84047
EMAIL

Mr. James N. Barber, Esq.
50 W BROADWAY #100
SALT LAKE CITY, UT 84101-2006
EMAIL

Mr. Richard D McKelvie, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Richard W. Daynes, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Vincent C. Rampton (USB 2684)
Billie J. Siddoway (USB 9710)
Ali Levin (USB 9409)
JONES WALDO HOLBROOK & MCDONOUGH PC
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200
Fax: (801) 328-0537
Attorneys for Plaintiff

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 18 P 12:21
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

RECEIVED CLERK

FEB 18 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MICHAEL K. OMAN,

Plaintiff,

vs.

DAVIS SCHOOL DISTRICT, a political
subdivision of the State of Utah; DR.
DARRELL K. WHITE, an individual; LYNN
TRENBEATH, an individual; GARY
PAYNE, an individual; JOHN SWAIN, an
individual; MEL MILES, an individual;
LEON WEBSTER, an individual; JOSEPH
MORRISON, an individual; and DALE
MAY, an individual,

Defendants.

**ORDER GRANTING MOTION
TO VACATE FINAL PRETRIAL
DISCLOSURE DATE**

Civil No. 1:03 CV 00057 DAK

Judge Dale A. Kimball

Based on the stipulation and motion of the parties, and good cause appearing,

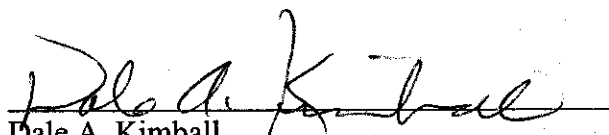
IT IS HEREBY ORDERED as follows:

1. That the date previously set by order of this Court for the exchange of final pretrial disclosures under Rule 26(a)(3), Fed. R. Civ. P. (such date being February 14, 2005), be and hereby is stricken; and

2. That the deadline for the exchange of said pretrial disclosures will be re-set by this Court incident to scheduling of the trial date and final pretrial conference herein.

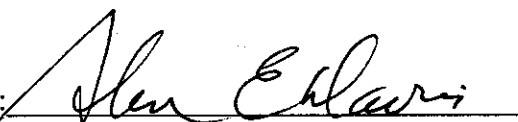
DATED this 17th day of February, 2005.

BY THE COURT:


Dale A. Kimball
United States District Judge

APPROVED AS TO FORM:

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL

By: 
Glen E. Davies
Assistant Attorney General
Attorneys for Defendant

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cv-00057

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Glen E. Davies, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

Mr. Vincent C Rampton, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 18 P 12: 21

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED CLERK

FEB 17 2005

U.S. DISTRICT COURT

Heather E. Morrison 6945
Roger H. Hoole 5089
HOOLE & KING, L.C.
4276 South Highland Drive
Salt Lake City, Utah 84010
Telephone: (801) 272-7556
Facsimile: (801) 272-7557
Email: hem@hooleking.com

Attorneys for Plaintiff, Kenton Dale

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

KENTON DALE,

Plaintiff,

vs.

ONE CALL LOCATORS, LTD. INC.,
a Montana Corporation,

Defendant.

ORDER

Judge Dale A. Kimball

Case No.: 2:04CV00707 DAK

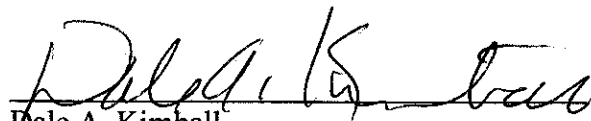
Based on the Application for Withdrawal of Counsel filed by Plaintiff's counsel Heather E. Morrison, Roger H. Hoole and the law firm of Hoole & King, L.C.; Kenton Dale's Consent to Withdrawal of Counsel; and good cause otherwise appearing therefore:

The Application for Withdrawal of Counsel is HEREBY GRANTED and Heather E. Morrison, Roger H. Hoole and the law firm of Hoole & King, L.C. are permitted to withdraw as counsel for Plaintiff, Kenton Dale.

25

Dated this 17th day of February, 2005.

BY THE COURT:

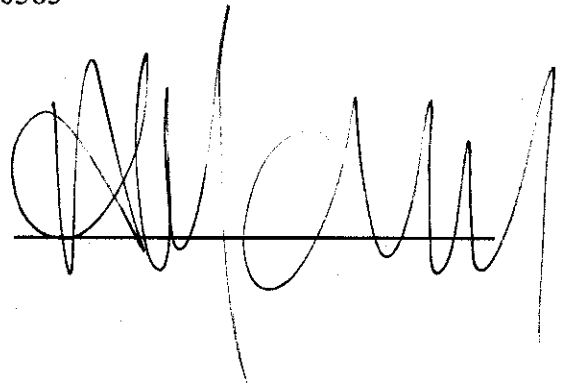
A handwritten signature in cursive script, appearing to read "Dale A. Kimball", written over a horizontal line.

Dale A. Kimball
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2005, a true and correct copy of the foregoing was placed in the United State Mail, postage pre-paid and addressed to the following:

Robert O. Rice
Frederick R. Thaler, Jr.
RAY QUINNEY & NEBEKER
36 South State Street, Suite 1400
P. O. Box 45385
Salt Lake City, Utah 84145-0385

A handwritten signature in dark ink, appearing to read "R. O. Rice", is written over a horizontal line. The signature is stylized with large, sweeping loops and a long vertical stroke at the end.

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00707

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Heather E. Morrison, Esq.
HOOLE & KING LC
4276 HIGHLAND DR
SALT LAKE CITY, UT 84124
EMAIL

Kenton Dale
3998 S 300 E
SALT LAKE CITY, UT 84107

Robert O. Rice, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 18 P 12:21

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Bruce J. Boehm (10039)
McKAY, BURTON & THURMAN
170 South Main Street, Suite 800
Salt Lake City, UT 84101
Telephone: (801) 521-4135

Attorney for Defendant Darrel Stephens

RECEIVED CLERK

FEB 17 2005

U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MICHAEL and LORI LENHART,
individually and as guardians of
JOSHUA LENHART,

Plaintiffs,

vs.

AIR AMERICA, INC., AIR AMERICA,
INC. MEDICAL BENEFITS PLAN,
GREAT-WEST LIFE & ANNUITY
INSURANCE CO., ONE HEALTH
PLAN, INC., DARREL STEPHENS, and
JOHN DOES I through V,

Defendants.


~~[PROPOSED]~~ ORDER

Civil No. 2:03CV00429

Judge Dale A. Kimball

Based on the foregoing stipulation, Stephens shall file his responsive pleading to the plaintiff's Amended Complaint within 20 (twenty) days after the Court's ruling on the motion to dismiss.

Dated: February 17, 2005


Hon. Dale A. Kimball
United States District Judge

56

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00429

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Allan O. Walsh, Esq.
MCKAY BURTON & THURMAN
170 S MAIN STE 800
SALT LAKE CITY, UT 84101
JFAX 9,5214252

Bruce Boehm, Esq.
MCKAY BURTON & THURMAN
170 S MAIN STE 800
SALT LAKE CITY, UT 84101
EMAIL

Scott M. Petersen, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Mr. Brian S King, Esq.
336 S 300 E STE 200
SALT LAKE CITY, UT 84111
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 18 P 12:24

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

TROY MILLER, *et al.*,

Defendants.

ORDER

Case No. 2:04-CR-251DAK

Judge Dale A. Kimball

The court has received the government's sealed ex parte submission regarding possible *Giglio* material. The government states that it obtained Officer Rapela's personnel and internal affairs files from Midvale City, Sandy City, and West Valley City. Although Officer Rapela "reserved" in Wendover, Utah, that agency did not respond and the government did not pursue the matter further. The only files discussed by the government are internal affairs files from West Valley City. Therefore, the court presumes that there were no potential *Giglio* materials submitted by the other cities.

The government determined in its investigation and analysis of the records that none of the materials from Officer Rapela's files with West Valley City constitute *Giglio* information because they do not call Officer Rapela's credibility into question. Because West Valley City forwarded a copy of its files directly to the court as well, the court has reviewed the materials itself. The court also previously stated that it would review the materials as well to determine whether it was in agreement with the government as to the disclosure of materials.

83

Although the court recognizes that the issue is a close call, the court believes that the following materials do call Officer Rapela's credibility into question and Defendant is entitled to the following materials in the West Valley City Internal Affairs Investigation IA 01-17 file:

1. A redacted version of the August 8, 2001 Intradepartmental Correspondence to the "Chief of Police" from the "Commanding Officer, Uniform Operations Division" regarding "Adjudication of Personnel Complaint Against Officer Marcelo, Rapela, #8260 (Resigned)" The August 8, 2001 Memorandum should be redacted to exclude the names of the other officers who were involved in the Complaint, the portions dealing with allegations made against and actions recommended to be taken against the other officers names in the Complaint, and all allegations that were "Not Sustained." If necessary or appropriate, the government may redact the names of all other officers and refer to them as Officer #1, etc. as long as such designations are correctly and consistently done.

2. A redacted version of the May 17, 2001 Intradepartmental Correspondence to "Uniform Services Bureau, Commanding Officer" from "Sergeant Buchanan, Afternoon Watch" regarding "Officer Misconduct and Unlawful Search of Private Property by Officer Marcello Rapella." The May 17, 2001 Memorandum may be redacted if appropriate or necessary to protect the names of the other officers involved. The officers may be referred to as Officer #1, etc. as long as such designations are correctly and consistently done.

The government discusses that there was a fellow officer who made statements challenging Officer Rapela's credibility that could have arguably constituted *Giglio* materials but that there is no record or recollection of the officer's identity. The court views the May 17, 2001 memorandum by Sergeant Buchanan as calling Officer Rapella's credibility into question.

However, the government does not directly address whether Sergeant Buchanan was the officer in question.

Although the court has ordered that these materials be disclosed to Defendant, it does not consider the government's position that these materials do not constitute *Giglio* materials to be a breach of the government's duty. The court merely takes a different view as to whether the materials could call Officer Rapela's credibility into question and concludes that Defendant is entitled to disclosure of the above materials. The government shall turn the above materials over to Defendant in an appropriately redacted form by February 25, 2005.

DATED this 18th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00251

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Mr. Michael W Jaenish, Esq.
150 S 600 E #5C
SALT LAKE CITY, UT 84102
EMAIL

Jon D. Williams, Esq.
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

Carol A. Dain, Esq.
WEST VALLEY CITY ATTORNEYS OFFICE
3600 CONSTITUTION BLVD
WEST VALLEY CITY, UT 84119

RECEIVED CLERK
FEB 17 2005
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

PANDA EXPRESS, INC., a California Corporation,
Plaintiff

v.

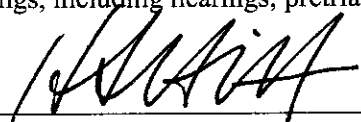
EXCEL CONSTRUCTION, L.C.,
a Utah Limited Liability Company,
Defendant.

*
* CASE NO. 204-CV-579 TS
*
* Appearing on behalf of:
*
* Plaintiff
* (Plaintiff/Defendant)
*
*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, **H. Justin Hitt**, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: February 16th, 2005


H. Justin Hitt, Utah Bar Number 8762

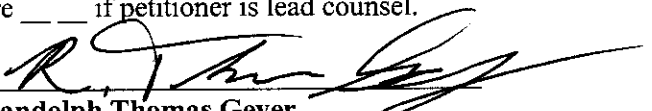
APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, **Randolph Thomas Geyer**, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) X a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates **the firm of Plant, Christensen & Kanell** as associate local counsel.

Date: February 7, 2005

Check here if petitioner is lead counsel.


Randolph Thomas Geyer

Name of Petitioner: Randolph Thomas Geyer Office Telephone: (303) 744-7911

(Area Code and Main Office Number)

Business Address: Yates & Leal, LLP
(Firm/Business Name)
700 17th Street, 20th Floor Denver CO 80202
Street City State Zip

15

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED

LOCATION

DATE OF ADMISSION

State of Texas

Texas

2004

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE

CASE NUMBER

DATE OF ADMISSION

None

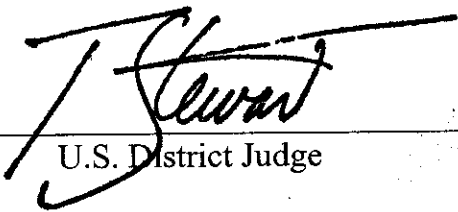
(If additional space is needed, attach a separate sheet.)

FEE PAID

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 18th day of Feb., 2005.


U.S. District Judge

RECEIVED CLERK

FEB 17 2005

U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

PANDA EXPRESS, INC., a California Corporation,
Plaintiff

v.

EXCEL CONSTRUCTION, L.C.,
a Utah Limited Liability Company,
Defendant.

CASE NO. 2:04-CV-579 TS


Appearing on behalf of:

Plaintiff
(Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, **H. Justin Hitt**, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: February 16th, 2005


H. Justin Hitt, Utah Bar Number 8762

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, **Erin R. Kristofco**, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) X a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates **the firm of Plant, Christensen & Kanell** as associate local counsel.

Date: February 7, 2005

Check here if petitioner is lead counsel.


Erin R. Kristofco

Name of Petitioner: Erin R. Kristofco Office Telephone: (303) 744-7911
(Area Code and Main Office Number)

Business Address: Yates & Leal, LLP
(Firm/Business Name)
700 17th Street, 20th Floor Denver CO 80202
Street City State Zip

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
State of Colorado	Colorado	2001
Federal District Court, District of Colorado	Denver, Colorado	2002
(If additional space is needed, attach separate sheet.)		

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
None		
(If additional space is needed, attach a separate sheet.)		

FEE PAID

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 18th day of Feb., 2005.



U.S. District Judge

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00579

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Terry M Plant, Esq.
PLANT CHRISTENSEN & KANEL
136 E S TEMPLE STE 1700
SALT LAKE CITY, UT 84111-2970
JFAX 9,5319747

Russell E. Yates, Esq.
YATES & LEAL
700 17TH ST 20TH FL
DENVER, CO 80202
JFAX 8,303,7448911

Randolph Thomas Geyer, Esq.
YATES & LEAL
700 17TH ST 20TH FL
DENVER, CO 80202

Mr. Robert R Wallace, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Mr. David A Reeve, Esq.
720 E THREE FOUNTAINS DR #77
MURRAY, UT 84107
EMAIL

FILED
DISTRICT COURT
2005 FEB 18 P 2:03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA

Plaintiff,

David Heckenliable

Defendant

:
:
:
:
:
:
:
:
:
:

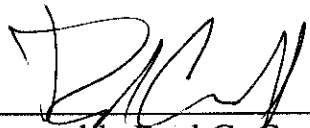
ORDER FOR FURLOUGH
RELEASE
2:04-CR-697-001

It is hereby ordered that the defendant be released from custody February 18,
2005, and return to custody March 18, 2005, to the U. S. Marshal's Office at 350
S. Main Street, Room B-20, Salt Lake City, Utah. While on release, the defendant
is to abide by the following conditions:

1. The defendant shall report to Pretrial Services as directed.
2. The defendant shall maintain residence and not change without permission of Pretrial Services.
3. The defendant shall not possess firearms or dangerous weapons.
4. The defendant shall submit to drug/alcohol testing as directed.

DATED this 18th day of February, 2005

BY THE COURT:



Honorable Paul G. Cassell
United States District Judge

28

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00697

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Barbara Bearnson, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. David P White, Esq.
DAVID PAUL WHITE & ASSOCIATES
5278 PINEMONT DR STE A200
MURRAY, UT 84123
JFAX 9,2664330

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court
District of Utah

2005 FEB 18 P 1:52

DEPUTY CLERK

UNITED STATES OF AMERICA

vs.

Christopher Michael Reilly
aka Michael Christopher Reilly

(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:00-CR-00488-001 DAK**

Plaintiff Attorney: **Stanley Olsen, AUSA**

Defendant Attorney: **John Caine**

Atty: CJA ___ Ret ☒ FPD ___

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **30161-013**

Defendant's Residence Address: _____

February 17, 2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

Same

Country **USA**

Country **USA**

COP **02/17/05** Verdict _____

THE DEFENDANT:

- ☒ admitted to allegation(s) **2**
- ☐ pleaded nolo contendere to allegation(s) _____
which was accepted by the court.
- ☐ was found guilty as to allegation(s) _____

Violation Number

2

Nature of Violation

Opened an additional line of credit without
permission of the U.S. Probation Office

**Date Violation
Occured**

March 20, 2004

Entered on docket

2-18-05 by:

[Signature]
Deputy Clerk

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) **1** (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **11 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of _____

- ☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

43

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine ImposedNo Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
US Bank Corporate Security Reference: 1999, #857613 P.O. Box 40188 Portland, OR 97240	\$99,828.52	\$99,828.52
Washington Mutual Bank Attn: Loss Management Reference: 0039667019, 0039667001; 193-22155- 400 East Main Stockton, CA 95290	\$41,078.23	\$41,078.23
Jacqueline Reilly 723 California Avenue Middletown, NY 10940	\$188.96	\$188.96
Geico Insurance Company Attn: Gary Magnesen Claim No. 013298206-11 101 South Rainbow Blvd, Suite 28 Las Vegas, NV 89145	\$14,019.27	\$14,019.27
Big O Tires Attn: Cheryl Watchek 5734 South Harrison Blvd. South Ogden, UT 84403	\$2,020.96	\$2,020.96
Totals:	\$ 157,135.94	\$ 157,135.94

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☒ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other:

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ _____, payable as follows:

☐ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

That the defendant serve his term of incarceration locally, either in Davis County or Daggett County.

CUSTODY/SURRENDER

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

February 18, 2005

Dale A. Kimball
Dale A. Kimball
United States District Judge

Defendant: Christopher Michael Reilly
Case Number: 2:00-CR-00488-001 DAK

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

blk

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cr-00488

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Kevin L. Sundwall, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

John T. Caine, Esq.
RICHARDS CAINE & ALLEN
2550 WASHINGTON BLVD
OGDEN, UT 84401
JFAX 8,801,3994194

FEB 18 2005

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

WHITMER,

Plaintiff,

vs.

WORLD FINANCIAL NETWORK
NATIONAL BANK, et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:04CV567DAK

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge David Nuffer. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 17th day of February, 2005.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

16

blk

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00567

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

C. Peter Whitmer
PO BOX 434
PLEASANT GROVE, UT 84062

Ronald F. Price, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
JFAX 9,3222003

PAUL M. WARNER, United States Attorney
SUMMER M. BROWNING, Special Assistant U.S. Attorney
Attorneys for the United States of America
75th ABW/Judge Advocate
6026 Cedar Lane
Hill Air Force Base, Utah 84056-5812
Telephone: (801) 777-7441

UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
FEB 16 2005
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK
RECEIVED CLERK
JAN 31 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No: 1:04-NCR-00121-001 SA
	:	
Plaintiff	:	Magistrate Judge Alba
vs.	:	ORDER
	:	
ELIZABETH A. JAROCH	:	
	:	
Defendant	:	

UPON motion of the Government and good cause appearing, IT IS HEREBY ORDERED
that the above-cited case be dismissed without prejudice.

DATED this 16th day of Feb. 2005.

BY ORDER OF THE COURT:


SAMUEL ALBA
U.S. Magistrate Court Judge

8

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00121

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Allan S. Brock, Esq.
HILL AIR FORCE BASE
DEPT 00-ALC/JA
6026 CEDAR LN BLDG 1278
HILL AFB, UT 84056-6755
EMAIL

Summer M. Browning, Esq.
OGDEN AIR LOGISTICS CENTER/JUDGE ADVOCATE
6026 CEDAR LN
HILL AIR FORCE BASE, UT 84056-5812

Elizabeth A. Jaroch
3020 POLK AVE
OGDEN, UT 84403

Mr. David J. Knowlton, Esq.
427 27TH ST
OGDEN, UT 84401
JFAX 8,801,3947706

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States District Court
District of UtahFILED
CLERK, U.S. DISTRICT COURT
2005 FEB 18 P 1:16**UNITED STATES OF AMERICA****vs.****Jerry G. Burk****JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:04-NCR-00143-001 SA**Plaintiff Attorney: **Summer Browning**Defendant Attorney: **Pro Se**

Atty: CJA ___ Ret ___ FPD ___

Defendant's Soc. Sec. No.: **528-88-9681**Defendant's Date of Birth: **10/1/1955**Defendant's USM No.: **None**

Defendant's Residence Address:

2567 North 400 West**Layton, Utah 84041**Country **USA****11/10/2004**

Date of Imposition of Sentence

Defendant's Mailing Address:

SameCountry **USA**COP **11/10/2004** Verdict

THE DEFENDANT:

☐ pleaded guilty to count(s)☒ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)**1 of the Misdemeanor Information****Title & Section****18 USC § 13****Nature of Offense****Intoxication (UCA 76-9-701)****Count****Number(s)****1**☐ The defendant has been found not guilty on count(s)☐ Count(s) (is)(are) dismissed on the motion of the United States.**SENTENCE**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

Upon release from confinement, the defendant shall be placed on supervised release for a term of

☐ The defendant is placed on Probation for a period of
The defendant shall not illegally possess a controlled substance.

5

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. None.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ 50.00, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
within 30 days.
- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☒ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☒ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 5.00 , payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure: NOT APPLICABLE

RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Jerry G. Burk
Case Number: 1:04-NCR-00143-001 SA

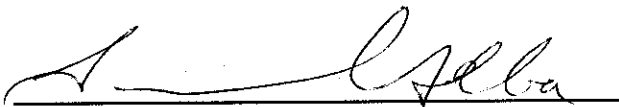
Page 4 of 5

CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

7/16/05



Samuel Alba

United States Chief, Magistrate Judge

Defendant: Jerry G. Burk
Case Number: 1:04-NCR-00143-001 SA

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00143

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Allan S. Brock, Esq.
HILL AIR FORCE BASE
DEPT 00-ALC/JA
6026 CEDAR LN BLDG 1278
HILL AFB, UT 84056-6755
EMAIL

Jerry G. Burk
2567 N 400 W
LAYTON, UT 84041

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

RECEIVED
JAN 17 2005
U.S. DISTRICT COURT

Based upon the Motion of the United States of America, and for good cause appearing, the Court hereby grants the government leave to dismiss the above-captioned Misdemeanor Information, without prejudice, under Rule 48(a) of the Federal Rules of Criminal Procedure.

DATED this 20 day of January 2005.

Brooke C. Wells
United States Magistrate

3

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00014

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

**Report and Order Terminating probation
Prior to Original Expiration Date**

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

FEB 16 2005

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

UNITED STATES OF AMERICA

vs

Criminal No. 2:03-CR-00688-001-BCW

DYLAN M. FOLEY

On September 9, 2004, Dylan M. Foley was placed on probation for a period of twelve months. The defendant has complied with the rules and regulations of probation and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.


Respectfully submitted,



John L. Warner
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 15 day of February, 2005.



Brooke C. Wells
United States Magistrate Judge

21

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00688

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Dustin B. Pead, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

FEB 16 2005

MARKUS B. ZIMMER, CLERK

BY

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH

RECEIVED CLERK

JAN 24 2005

U.S. DISTRICT COURT

UNITED STATES OF AMERICA

Plaintiff,

vs.

JEFFREY REEVES

Defendant.

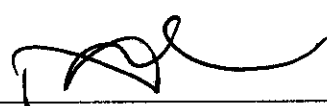
ORDER

Case No. 2:03CR00487

Magistrate Judge Brooke C. Wells

Based on Defendant's successful completion of his probation and the representations made by both his probation officer and the United States Attorney's Office the Court hereby dismisses this matter insofar as it pertains to defendant Jeffrey Reeves. IT IS SO ORDERED.

Dated this 15 day of ^{February} ~~January~~, 2005.


Magistrate Judge
~~Brooke C. Wells~~ David Neftci

14

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00487

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Douglas L. Stowell, Esq.
STOWELL JONES
307 E STANTON AVE
SALT LAKE CITY, UT 84111

Mr. William L. Nixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

U.S. DISTRICT COURT
DISTRICT OF UTAH
SALT LAKE CITY
11/17/03

THAYER C. LINDAUER, ESQ.
792 ARLINGTON STREET
CAMBRIA, CALIFORNIA 93428-3208
TELEPHONE: (805) 927-6804
FACSIMILE: (805) 927-5684

NATHAN D. PACE, P.C. (6626)
STACEY G. SCHMIDT (6647)
PACE & HUGHES, L.L.C.
50 SOUTH MAIN, SUITE 850
SALT LAKE CITY, UTAH 84144-0103
TELEPHONE: (801) 355-9700
FAX (801) 355-9705

REGISTERED CLERK

U.S. DISTRICT COURT

Attorneys for Defendants-Counterclaimants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

WHOLE LIVING, INC. a Nevada
corporation doing business as
THE BRAIN GARDEN,
Plaintiff,

ORDER ALLOWING WITHDRAWAL
OF COUNSEL

DON TOLMAN, an individual, MARK
BOWEN, an individual, THINK AGAIN,
INC. a Tennessee Corporation, dba
GREAT AMERICAN, THE
WHOLEFOOD FARMACY, THAYER
C. LINDAUER, JOHN DOES
1-100 AND CORPORATION
DOES 1-100,

Civil No: 2:03CV-0272 TS
District Judge Ted Stewart
Magistrate Judge Samuel Alba

197

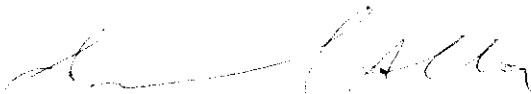
Defendants.	:
_____	:
	:
DON TOLMAN and AMBER TOLMAN,	:
individuals,	:
Counterclaimants,	:
	:
v.	:
WHOLE LIVING, INC. a Nevada corp.	:
doing business as THE BRAIN GARDEN,	:
Counterdefendants.	:

This matter came before the Honorable Magistrate Judge Samuel Alba on January 25, 2005. Plaintiffs counsel, Daniel W. Jackson, was present and Defendants' counsel, Stacey G. Schmidt, was present, Thayer D. Lindauer was not present. The Court having heard Plaintiffs' counsel, who supported Defendants Motion and Defendants counsel made concurring arguments in support of said motion, having reviewed the file and being otherwise duly advised, enters the following Order:

IT IS HEREBY ORDERED:

1. The Motions for Nathan D. Pace and the Law Office of Pace & Hughes, L.L.C. to withdraw as counsel is hereby granted, based on a conflict of interest that has arisen with Defendants'.
2. The Motion for Thayer D. Lindauer to withdraw as counsel is hereby granted, based on Mr. Lindauer now being named as a Defendant.

DATED 17th day of Feb., 2005.


Magistrate Judge Samuel Alba

APPROVED AS TO FORM:

_____ Dated _____
Daniel W. Jackson
Attorney for Plaintiff

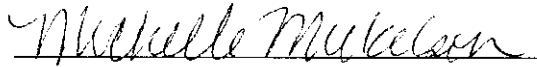
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy, postage pre-paid, of the foregoing Order

Allowing Withdrawal of Counsel on this 1 day of Feb, 2005 to:

Daniel W. Jackson
2157 Lincoln St.
Salt Lake City, UT 84106

Margaret H. Olson
525 South 300 East
Salt Lake City, UT 84111-3508



United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00272

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Margaret H. Olson, Esq.
HOBBS & OLSON
525 S 300 E
SALT LAKE CITY, UT 84111
EMAIL

Mr. Daniel W Jackson, Esq.
2157 LINCOLN ST
SALT LAKE CITY, UT 84106
EMAIL

Thayer C. Lindauer, Esq.
792 ARLINGTON ST
CAMBRIA, CA 93428
EMAIL

Nathan D. Pace, Esq.
PACE & HUGHES
50 S MAIN STE 850
SALT LAKE CITY, UT 84144-0103
EMAIL

Stacey G. Schmidt, Esq.
PACE & HUGHES
50 S MAIN STE 850
SALT LAKE CITY, UT 84144-0103
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 18 2005

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

ELEUTERIO MEJIA-CRUZ

Defendant(s).

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

Case No. 2:02-CR-570

ORDER APPOINTING COUNSEL

The defendant, ELEUTERIO MEJIA-CRUZ requested the appointment of counsel on 2/18/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 18th day of February, 2005.

BY THE COURT:

Samuel Alba

Samuel Alba
Chief Magistrate Judge

23

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00570

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

David F. Backman, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION
FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FEB 17 2005

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JONATHAN WILLIAMS

Defendant(s).

MARKUS B. ZIMMER, CLERK

BY

Case No. 2:05-CR-38 TS

DEPUTY CLERK

ORDER APPOINTING COUNSEL

The defendant, JONATHAN WILLIAMS requested the appointment of counsel on 2/17/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 17th day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge

6

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00038

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

JONATHAN WILLIAMS

Case Number:

2:05-CR-38 TS

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FEB 17 2005

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense) that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

MARKUS B. ZIMMER, CLERK

BY

DEPUTY CLERK

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

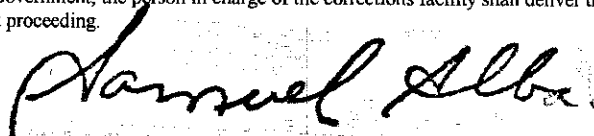
I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

NATURE OF THE CHARGES

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 17, 2005



Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBRECHT

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq) or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00038

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 17 P 3:33

DISTRICT OF UTAH

DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NATIONAL FIRE INSURANCE
COMPANY OF HARTFORD, a Connecticut
corporation,

Plaintiff,

vs.

EVOLUTION SERVICES, INC., a Utah
corporation, and PRESIDIO INSURANCE
AGENCY, LC, a Utah limited liability
company,

Defendants.

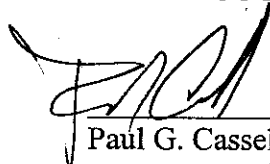
ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT

Case No. 2:04-CV-00232 PGC

Based on the stipulated motion to allow plaintiff to amend its complaint (#9-1), the court
GRANTS plaintiff's motion.

DATED this 17th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00232

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. David W Slaughter, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

Mr Cameron M Hancock, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 17 P 3:33

DISTRICT OF UTAH

EX:
DEPUTY CLERK

RECEIVED CLERK

FEB 11 2005

U.S. DISTRICT COURT

Craig G. Adamson (0024)

Eric P. Lee (4870)

Craig A. Hoggan (8202)

DART ADAMSON & DONOVAN

Attorneys for Plaintiff

370 East South Temple, Suite 400

Salt Lake City UT 84111

Telephone: (801) 521-6383

RECEIVED

FEB 14 2005

OFFICE OF
JUDGE PAUL G. CASSELL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

---0000000---

DDA FAMILY LIMITED PARTNERSHIP,
A Utah limited partnership,

Plaintiff,

v.

CITY OF MOAB, a Utah municipal
Corporation, DEBBIE GILGER in her
individual capacity, KYLE BAILEY in his
individual capacity, and John Does 1-10,

Defendants.

MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

ORDER

Civil No. 2-04-CV-392

Judge Paul Cassell

---0000000---

Plaintiff DDA Family Limited Partnership moves the Court for leave to file its Second Amended Complaint, pursuant to Federal Rule of Civil Procedure 15. A copy of the proposed Second Amended Complaint is attached as exhibit A.

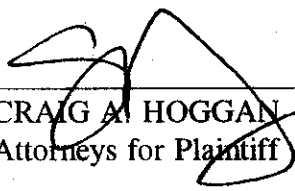
In support, DDA notes that the proposed amendment adds only 3 paragraphs to the existing complaint, new paragraphs 60-62. The amendment is made necessary by recent conduct by defendant which is relevant to the existing claims in the case.

15

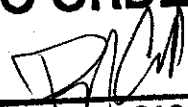
No new claims or parties are added and defendant will suffer no prejudice since the case was just recently initiated. The parties are pursuing mediation through the Court's ADR program and no discovery has been initiated.

DATED this 10 day of February, 2005.

DART ADAMSON & DONOVAN


CRAIG A. HOGGAN
Attorneys for Plaintiff

SO ORDERED


PAUL G. CASSELL
United States District Judge

Date

2/17/05

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00392

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Craig G. Adamson, Esq.
DART ADAMSON & DONOVAN
370 E S TEMPLE STE 400
SALT LAKE CITY, UT 84111-1255
EMAIL

Mr. Steven W. Allred, Esq.
1007 E NORTH BONNEVILLE DR
SALT LAKE CITY, UT 84103
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

Duane Wixson

aka Allan Wixson

aka Jacob Wixson

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **1:04-cr-00035-001 PGC**

Plaintiff Attorney: **Paul Amann**

Defendant Attorney: **Michael Boyle**

Atty: CJA ___ Ret ☒ FPD ___

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11321-081**

Defendant's Residence Address: _____

Country **USA**

02/16/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

same

Country **USA**

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **08/26/2004** Verdict _____

2 of the Indictment

Title & Section

**18 USC § 2252 A
(a)(5)(B)**

Nature of Offense

Possession of Child Pornography

**Count
Number(s)**

2

Entered on docket

2-18-05 by:

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) **1 and 3 of the Indictment** (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **136 months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **until the defendant reaches the age of 65**

☐ The defendant is placed on Probation for a period of _____

30

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO..
2. The defendant shall not use or possess alcohol.
3. The defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the USPO. The Court orders that the pre-sentence report may be released to the state agency for purposes of sex offender registration.
4. The defendant shall participate in a mental health and/or sex-offender treatment program as directed by the USPO and take any mental health medications as prescribed.
5. The defendant is restricted from visitation with individuals who are under 18 years of age without adult supervision as approved by the USPO.
6. The defendant shall abide by the following occupational restrictions: Any employment shall be approved by the USPO. In addition, if third-party risks are identified, the USPO is authorized to inform the defendant's employer of his supervision status.
7. The defendant shall not possess or use a computer with access to any on-line computer service without the prior written approval of the Court. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval by the Court shall be subject to the conditions set by the Court or the USPO. In addition, the defendant shall: (A) Not possess or use any public or private data encryption technique or program, and (B) Consent to having installed on his computer(s) any hardware or software systems to monitor his computer usage.

8. The defendant shall not view or otherwise access pornography in any format.
9. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release: failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
10. The defendant shall submit to DNA testing at the direction of the BOP or the USPO.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation and a sex offender treatment program.

Defendant: Duane Wixson
Case Number: 1:04-cr-00035-001 PGC

Page 5 of 6

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

2/17/05



Paul Cassell

United States District Judge

Defendant: Duane Wixson
Case Number: 1:04-cr-00035-001 PGC

Page 6 of 6

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00035

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Paul G. Amann, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
CHILDREN'S JUSTICE DIVISION
5272 COLLEGE DR STE 200
SALT LAKE CITY, UT 84123
EMAIL

Michael J. Boyle, Esq.
BOYLE & DRAGE
2554 S MONROE BLVD
OGDEN, UT 84401
JFAX 8,801,3944923

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED

2005 FEB 17 P 4:07

MATTHEW A. MACKIN,

Plaintiff,

v.

ADC et al.,

Defendants.

Case No. 2:04-CV-187 PGC/ERK


O R D E R

Plaintiff, Matthew A. Mackin, filed a *pro se* prisoner civil rights complaint. See 42 U.S.C.S. § 1983 (2005). He now moves the Court to "gather evidence" and review the jail's grievance decision.

IT IS HEREBY ORDERED that both motions are denied. (See File Entry #s 7 & 8.) First, the motion to gather evidence may be construed as a request for discovery; however, such a request is premature at this stage when the complaint has yet to be screened. See 42 U.S.C.S. 1915A (2005). Second, this Court has no jurisdiction to directly review the jail's grievance decision.

DATED this 17 day of February, 2005.

BY THE COURT:


~~BROOKE C. WELLS~~ DAVID MURPHY
United States Magistrate Judge

11

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00187

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Matthew A. Mackin
4672 W 4695 S
WEST VALLEY CITY, UT 84119

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
4:47

United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

Jesus D. Beltran
aka "Danny Boy"

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-cr-00626-001 PGC**

Plaintiff Attorney: **Robert Steed**

Defendant Attorney: **Bel-Ami de Montreux**

Atty: CJA ___ Ret ☒ FPD ___

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11998-081**

Defendant's Residence Address: _____

Country USA

02/17/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

same

Country USA

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 12/06/2004 Verdict _____

1 of the Indictment

Title & Section

18 USC § 922(g)(1)

Nature of Offense

**Possession of a Firearm and Ammunition by a
Convicted Felon**

Count

Number(s)

1

Entered on docket

2-18-05 by:

BT
Deputy Clerk

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

51 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

36 months

☐ The defendant is placed on Probation for a period of _____

The defendant shall not illegally possess a controlled substance.

17

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the USPO and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment.
2. The defendant shall submit to electronic monitoring for a period of 90 days and assume the applicable costs, payable on a monthly basis. The defendant shall comply with all of the terms and conditions set forth in the Home Confinement Program Participant Agreement as provided by the USPO. The defendant shall remain in his residence at all times, except for approved leave as deemed appropriate by the USPO.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant will refrain from association with any known gang members.
5. The defendant shall submit to DNA testing at the direction of the BOP or the USPO.
6. The defendant shall continue to be current on his state restitution obligation and provide verification to the USPO.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
-

☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:
- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

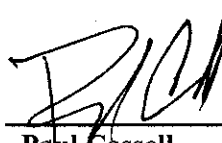
- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Placement in a facility on the east coast to avoid prior associates from Utah and an intensive drug treatment program.

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 2/17/05



Paul Cassell
United States District Judge

Defendant: Jesus D. Beltran
Case Number: 2:04-cr-00626-001 PGC

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00626

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert E. Steed, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Bel-Ami J. de Montreux, Esq.
180 S 300 W #350
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH NORTHERN DIVISION

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 17 P 4:47

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

WASATCH ENERGY LLC, a Utah
limited liability company,

Plaintiff,

vs.

NGL.COM, a Texas limited liability
company,

Defendant.

REFERRAL TO ADR
PROGRAM

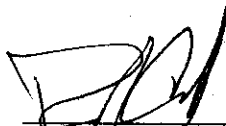
Case No. 1:04-CV-00125 PGC

The above-entitled matter is hereby referred to the court-annexed Alternative Dispute Resolution Program for Arbitration.

Further proceedings in this matter shall be governed by the provisions of DUCivR 16-2 and its accompanying ADR Plan.

IT IS SO REFERRED, this 17th day of February, 2005.

By



Paul G. Cassell
United States District Judge

4

tsh

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00125

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Eric C. Olson, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Perrin R. Love, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 18 2005

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

URIEL ORDONEZ-JIMINEZ

Defendant(s).

MARKUS B. ZIMMER, CLERK

BY

Case No. 2:04-CR-81 DKW DEPUTY CLERK

ORDER APPOINTING COUNSEL

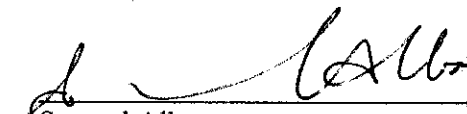
The defendant, URIEL ORDONEZ-JIMINEZ requested the appointment of counsel on 2/18/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 18th day of February, 2005.

BY THE COURT:



Samuel Alba

Chief Magistrate Judge

6

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00081

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

EMAIL

US Probation
DISTRICT OF UTAH

EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

URIEL ORDONEZ-JIMINEZ

Case Number:

2:05-CR-81 DKW

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)

☐ an offense for which the maximum sentence is life imprisonment or death

☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____ *

☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense

☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).

☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

☐ (1) There is probable cause to believe that the defendant has committed an offense

☐ for which a maximum term of imprisonment of ten years or more prescribed in _____

☐ under 18 U.S.C. §924(c)

☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

☐ (1) There is a serious risk that the defendant will not appear.

☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

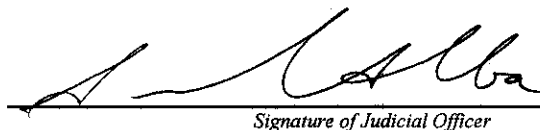
I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

BICE HAS PLACED A HOLD ON DEFENDANT

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 18, 2005



Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBA

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00081

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 18 2005

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

AMADO ZALDIVAR-RIVERO

Defendant(s).

Case No. 2:05-CR-86

BY JTG

ORDER APPOINTING COUNSEL

The defendant, AMADO ZALDIVAR-RIVERO requested the appointment of counsel on 2/18/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 18th day of February, 2005.

BY THE COURT:



Samuel Alba

Chief Magistrate Judge



United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00086

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert K. Hunt, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.
AMADO ZALDIVAR-RIVERO

Case Number:

2:05-CR-56-570FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

FEB 18 2005

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☐ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

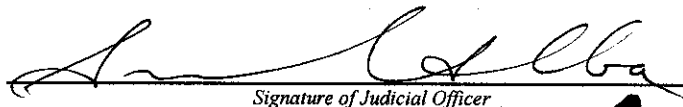
I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

BICE HAS PLACED A HOLD ON DEFENDANT

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 18, 2005


Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBA

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 18, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00086

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

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United States Marshal Service
DISTRICT OF UTAH

,
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